Maryland

CONSTITUTIONAL CONVENTION COMMISSION

COMMISSION MEETING

Brown Estate

Port Deposit, Maryland

October 25, 1966

VOLUME IX

CONSTITUTIONAL CONVENTION COMMISSION

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Assistant to the Executive Director

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Ernest N. Cory, Jr. *(Resigned May 13, 1966)*
Walter R. Haile *(Resigned December 20, 1966)*
William J. McWilliams *(Resigned September 10, 1965)*
Ridgely P. Melvin, Jr. *(Resigned August 2, 1966)*
George L. Russell, Jr. *(Resigned July 12, 1966)*

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700 Mercantile Trust Building
Baltimore, Maryland 21202

CONSTITUTIONAL CONVENTION COMMISSION

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(appointed on July 12, 1966)
Stanford Hoff
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(appointed on November 9, 1966)
Melvin J. Sykes
(appointed on July 12, 1966)
Lewis D. Asper, Reporter

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(served until January 5, 1966)
Ernest N. Cory, Jr.
(served until May 13, 1966)
George L. Russell, Jr.
(served as Chairman until July 12, 1966)

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(served until June 6, 1966)
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(served until May 13, 1966)

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(served as Chairman until September 10, 1965)
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William Prescott Allen
(served until January 5, 1966)
Walter R. Haile
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(served until May 13, 1966)
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(served until June 6, 1966)

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(served until June 6, 1966)
Charles Della
(served until June 6, 1966)
Stanford Hoff
(served until June 6, 1966)
Clarence W. Miles
(served until June 6, 1966)
George L. Russell, Jr.
(served until June 6, 1966)

CONSTITUTIONAL CONVENTION COMMISSION

Meeting of the Constitutional Convention Commission held on Tuesday, October 25, 1966, at 8:30 a.m., at the Brown Estate, Port Deposit, Maryland.

PRESENT:

H. Vernon Eney, Esquire,
Chairman of the Commission
Honorable E. Dale Adkins, Jr., Member
Dr. Harry Bard, Member
Calhoun Bond, Esquire, Member
Mrs. Elsbeth Levy Bothe, Member
Dr. Franklin L. Burdette, Member
Hal C. B. Clagett, Esquire, Member
Mr. Charles Della, Member
Mrs. Maurice P. (Leah S.) Freedlander, Member
James O'Conor Gentry, Esquire, Member
Walter R. Haile, Esquire, Member
Stanford Hoff, Esquire, Member
John B. Howard, Esquire, Member
Dr. Martin D. Jenkins, Member
Honorable William Preston Lane, Jr., Member
Robert J. Martineau, Esquire, Member
Edward T. Miller, Esquire, Member
Charles Mindel, Esquire, Member
John W. Mitchell, Esquire, Member
Mr. E. Phillip Sayre, Member
Alfred L. Scanlan, Esquire, Member
Mr. L. Mercer Smith, Member
Melvin J. Sykes, Esquire, Member
Dr. Furman L. Templeton, Member
Honorable William C. Walsh, Member

Reported by:
N. F. Swetland

ALSO PRESENT:

John C. Brooks, Esquire, Executive Director
Dr. John H. Michener, Research Assistant
Dr. Clinton Ivan Winslow, Consultant
Mrs. Margaret Kostritsky, Reporter
Stephen H. Sachs, Esquire, Reporter
William Noonberg, Esquire, Reporter

THE CHAIRMAN: Before we resume consideration of the report of the Committee on Political Subdivisions, I would like to make a few comments to do two things. One, to state to the Commission the views which I have stated to the Committee and, secondly, to try to bring into perspective the statements made yesterday evening at the close of the meeting because the differences among the members of the Committee and the staff and the other people who have been working in this area are not great and that is certainly not great in number; I think there are only really two basic differences, and thirdly, I would like to point out that this is decision day as far as this report is concerned.

We cannot, simply cannot refer any matters

1 in principle back to the Committee, whether we are
2 right or wrong in the decisions we make today, we simply
3 must make them.
4 It will not be possible, I am sure, for
5 us to take sufficient time to polish up the language
6 in the way that maybe we would all like to have it
7 depending upon what policy decisions we make. But I
8 think we can leave the language to the Committee and
9 the staff subject to circulation to the Commission by
10 mail. The policy decisions can't be postponed any
11 longer by the Committee and must be decided by the
12 Commission. It is entirely possible that members of
13 the Commission may feel that it is not only difficult
14 but almost impossible to make policy decisions on what
15 is really rather brief consideration of this subject
16 by the Commission as a whole, although the Committee has
17 studied it very extensively. However, I think if we
18 keep in mind that our task is to present the problem
19 and possible solution of the problem to the Convention
20 and we are not making the final decision, it might be
21 a little easier for us to arrive at what our recommendation

1 will be. I think unquestionably that regardless of
2 which of these several approaches the majority of
3 the Commission feel we should take as a matter of the
4 recommendations of the Commission to the Convention, the
5 opposite approach will certainly be pointed out in the
6 report if not explicitly as an alternate, certainly very
7 clearly outlined so that the entire picture will be
8 presented to the Convention. Let me try to state my own
9 views and also try to bring into perspective these few
10 problems on which there is a diversion.
11 As I indicated at the very outset of our
12 work, I think the task confronting us in this area is,
13 if not the most important,one of the most important
14 problems confronting the Commission and ultimately to
15 confront the Convention.
16 In saying that I don't mean to in any way
17 minimize the other problems and decisions but I think
18 this has a greater importance because of the fact that
19 it, more than any other facet of our work, is trail-
20 blazing and we don't know exactly where we're going.
21 I think all of us are in accord in recognizing that this

1 tremendous urbanization and industrialization that is
2 proceeding at such a rapid pace throughout the country
3 but is proceeding at a breakneck pace in Maryland is
4 bound to create problems. I think we would all agree
5 that we are not wise enough to sit here today and
6 work out the ultimate solution of all of those problems
7 in detail.
8 I think what we can do is to work out a
9 draft of a Constitution which would give the Legislature
10 or the county governments or the people of the State
11 a framework on which to build and a guidepost, if you
12 want, or a signpost pointing a direction in which we
13 think they should go. It seems to me stating the
14 obvious to say that there must be evolved in the very
15 near future some form of government that is different
16 from our traditional county government, different in
17 the sense of being more encompassing in a territorial
18 sense.
19 Our counties have lines that make no relation
20 at all, of no relation at all to the economics of the
21 area, to the population of the area, to the problems of

1 the area. They are purely artificial lines. They have
2 a lot of tradition and a lot of pride and feeling back
3 of them but they have no relation at all to things such
4 as sewers and drainage districts and transit and
5 population problems and so forth. Now, these problems
6 must be solved and they will be solved. They have to
7 be solved by governmental units of some kind.
8 There are several approaches which have
9 been outlined in the statements that you had last evening
10 and are indicated in the Committee's report and in
11 the draft, the various drafts that you have had presented
12 to you. They are quite different in verbiage and
13 language but basically the approaches diverge in only
14 these two or three,possibly three areas. These are
15 first: All, and when I say all, I am talking about the
16 Committee and the staff and the whole group who are
17 working, all are agreed on a few fundamentals. What
18 are they? They are that the Legislature must have the
19 power to alter county lines, including the power to
20 abolish counties. Secondly, the Legislature must have
21 the power to create governmental units, units of local

1 government that are not counties but are between the
2 county level and the state level, that there must be
3 a means by which counties, and I always include Baltimore
4 City when I say "counties," can cooperate to achieve
5 common objectives in the administration of things such
6 as sewers and transit and so forth.
7 If the counties do not by cooperation
8 solve their problems at their own level, the matter is
9 of such importance to the state that the state must
10 step in and say "You shall do it this way." Next, and
11 I think every one of us is agreed on this, none of us
12 feels that he is competent to sit down today and work
13 out a draft of a form of regional government that would
14 fit all situations that now exist,that are known to us,
15 and certainly would not fit this situation as it may
16 develop in the future. Finally all of us are agreed
17 also on the principle that what may be a highly desirable
18 form of regional government in the Baltimore City area
19 and the City of Washington, may be most undesirable on
20 the Eastern Shore, in Western Maryland or Southern Maryland
21 and that it is not necessary that we have complete

1 rigidity and have exactly the same form of government,
2 in all areas and regions of the State. One area today
3 may be in prime need of some form of regional govern-
4 ment and that need may not be felt in another area of
5 the State for years, if at all.
6 Therefore, we are agreed that the regional
7 governments can differ. They need not be complete
8 governments. They can be governments that are limited
9 in scope, that, for instance, deal only with land
10 use, planning, or they deal with sewers or deal with
11 transit or other specific problems or a combination of
12 them. We are all agreed also that if in any one area
13 it is desirable to solve on an areawide basis a particular
14 problem or group of problems, it should be solved by
15 the means of mechanics of one governmental unit, that
16 you should not have in an area or overlapping areas a
17 sewer authority, a transit authority, a water authority,
18 a planning authority and so forth. With those views
19 held unanimously, where are the differences in the
20 approach of the groups that boil down to a very few
21 fundamental differences. First, in the area of changing

1 county lines, there is the feeling and a very strong
2 feeling that while theoretically it is desirable to give
3 the complete power to the Legislature, nevertheless, as
4 a practical matter, looking the political situation, in
5 the broad sense that I use that term, squarely in the
6 eye, this simply is not feasible and not desirable,
7 that county structures are such that the people should
8 have a voice and that you should not have in the
9 Legislature the power to alter counties and switch
10 people from one county to another without some form of
11 referendum and there are, as you found out yesterday,
12 differences in views as to how far the referendum, should go.
13 extend the referendum completely, you give a veto, to
14 any area of the state to prevent a reshuffling of
15 county lines by the Legislature. In lesser extent, you
16 perhaps don't give a veto but you put a brake on it.
17 So that one major difference is should you have
18 absolute authority in the Legislature which in theory
19 is perhaps the ideal way or should you go to the other
20 extreme and say that it cannot be done except by the
21 approval of the majority of the voters in all the areas

1 affected or do you go somewhere in between. That is one
2 area, one policy question that I submit to you must
3 be decided this morning. The second big area is the
4 question of regional governments. Now when you see what
5 points the groups are completely unanimous on, I think
6 you can see where the differences lie. Now what are
7 they? That there will be need for regional governments.
8 There is no question about it. Whether there is a
9 need in any area there should not be a multiplicity of
10 governments or authorities, there should be one, that
11 they need not be uniform throughout the state but may
12 vary throughout the state and that the people ought to
13 have the right in any given area to decide their own
14 form of regional government in the same way they can
15 decide their own form of county. Now the one approach
16 is that since we do not know the best form, simply
17 authorize two things in the Constitution, authorize
18 intergovernmental in the sense of intrastate governmental
19 cooperation among counties. That is one approach.
20 Authorize it and they will work out the problems but
21 in addition, give the Legislature the power to create

1 super counties, regions or whatever you want to call them.
2 Simply authorize the Legislature to do it in the future
3 if the need arises. That is one approach. The other
4 approach is create in the Constitution the framework,
5 not the detail, but the framework of a regional
6 government and provide that if the Legislature in any
7 given area does not call it into being, then either
8 the governments of the participating counties can call
9 it into being or the voters in those counties can call
10 it into being. Now this we have laid open for convenience
11 the dormant region of government approach. Now in order
12 to make it effective since you can't authorize the
13 people to call into being something without at least a
14 structure, this would mean that you would provide in
15 the Constitution that the Legislature must divide the
16 State into regions, always giving the Legislature
17 control to change the regions whenever they want and
18 since you can't mandamus the Legislature to do something
19 you would have to provide that if the Legislature
20 within a certain time does not provide regions, then
21 here they are. Therefore, the second policy question

1 is going to be, are you going to go down the path of
2 pure voluntary activity, create a situation that
3 encourages development of cooperative effort among the
4 counties plus power in the Legislature to create
5 regional governments, not defining what they are and
6 keeping in mind when you create the regional government
7 you take away from the county whatever power you give
8 the regional government, or are you going to go one
9 step further and say that here is a form in only very
10 broad outline of a regional government; if the Legislature
11 does not call it into being the county commissioners
12 of the affected counties can or the people of the affected
13 area can.
14 No one is suggesting the approach that we
15 provide in the Constitution to come into being with the
16 adoption of the Constitution, regional governments.
17 It is either the county approach with the power in the
18 Legislature to go further or it is the dormant regional
19 government approach.
20 Now I think with that explanation, Mr.
21 Clagett will then go through the article again, section

1 by section and if you will keep the three drafts in front
2 of you and keep these two points in mind, I think we
3 can make the policy decisions very promptly. Now one
4 other suggestion and this is going to be a seemingly
5 statement that is inconsistent within itself.
6 I don't want us to take a lot of time in
7 working out language because none of these drafts are in
8 precisely the form that they are going to be finally
9 because we don't know what the policy decisions are
10 going to be.
11 At the moment I do not want to discourage
12 suggestions for change. As Mr. Clagett pointed out to
13 me, the Committee has been working on this language for
14 a year and the very obvious suggestion made yesterday
15 that incorporated belonged in front of city never occurred
16 to anybody. When you see something like that, flag
17 it, but don't get into any long debate. Now, Mr. Clagett,
18 proceed.
19 MR. CLAGETT: Mr. Chairman, one of the most
20 interesting aspects of this whole article in the
21 Constitution is that it changes from day to day and

1 appreciations expand just as the sun comes up and goes
2 into the highest point and then settles. Last night
3 when it settled some new ideas dawned contrary to the
4 normal working of the pattern and I think we have got
5 a suggested solution to one aspect of our problem
6 this morning which will greatly simplify the decision
7 making responsibility which the Commission has. Let
8 me direct your attention now to the Sixth Report and
9 Page 10 of that report.
10 Section 11.01 sets forth the units of
11 local government and subsection (a) defines those
12 units as consisting of 24 counties, the 23 existing
13 counties and Baltimore City included as a county.
14 Then it takes the phrase municipal corporation and
15 defines it to mean an incorporated city, town , or
16 village but shall not include Baltimore City or any
17 county because of just the reason I have said heretofore,
18 counties and municipal corporations being the two units
19 of government to be provided for in this Constitution.
20 Are there any questions about that? If not, then
21 moving on into subsection (b), the General Assembly may

1 provide by law for the creation of counties and other
2 civil divisions, and here we include specifically
3 provision for regional governments and intergovernmental
4 authorities but excluding municipal corporations and
5 for methods and procedures of creating, incorporating,
6 changing and dissolving counties and other civil divi-
7 sions and altering their boundaries. So in the General
8 Assembly rests the ultimate authority insofar as
9 creation and dissolution or change is concerned. With
10 respect to boundaries, we make only a limited referendum
11 provision and as indicated yesterday, this is a compro-
12 mise among many choices and we have tried to adhere to
13 the principle of giving to the General Assembly a degree
14 of flexibility but at the moment some measure of protec-
15 tion insofar as the local subdivisions are concerned.
16 We, therefore, impose restrictions only in three
17 categories, whether a few counties are being created,
18 whether the lines of a county are being altered, consist-
19 ing of three counties or less and the third category,
20 whether more than the three counties are affected.
21

1 THE CHAIRMAN: Just a second.

2 MR. CLAGETT: And provide for a different

3 referendum in each case.

4 MR. SCANLAN: Is Mr. Clagett going through

5 the whole section?

6 THE CHAIRMAN: No, we are going through the

7 whole of this section and we will come back because

8 this section raises both of the primary questions in-

9 volved.

10 MR. SCANLAN: Will it be proper to make a

11 motion about this section later?

12 THE CHAIRMAN: Yes.

13 MR. CLAGETT: That is it, it would be

14 proper to make that motion now except I was going to

15 add that we did take a vote on the first referendum

16 provision regarding a new county and you will recall

17 that the vote was that the language or the provision

18 stay as is and where a new county is being created

19 which would in fact be the merger of two existing

20 counties that it would be a majority of the voters within

21 the new area that would be built into the Constitution.

1 Of course, that does not exclude and I want
2 it clearly kept in mind, that does not exclude the
3 permissive referendum which would be provided for in
4 the Constitution with respect to any bill.
5 THE CHAIRMAN: Mr. Sykes.
6 MR. SYKES: Mr. Chairman, I have a question
7 first. I understood the Chair to say that all the
8 people who had been working on this were in agreement
9 that if there was to be any kind of governmental
10 authority transcending county lines, it should be the
11 same authority for all functions that transcended county
12 lines that might be granted to such a form of government.
13 It would seem to me that if that is true,
14 it is inconsistent to provide for any form of super
15 county government except the regional government and
16 that if you provide for intergovernmental authorities
17 in addition to regional governments, you are doing what
18 the Chair says nobody wants to do.
19 Now is this language of the Committee a
20 considered approach and was the Chair in error in its
21 statement about the agreement on regional government?

1 THE CHAIRMAN: I think I probably stated
2 it a little too broadly and, Hal, you correct me if I
3 don't state it more accurately now. I think there is
4 general agreement that if in a given area you create an
5 authority or regional government to solve a joint
6 problem, that you should delegate to that authority all
7 other joint problems in that same area but the feeling
8 is that the Legislature should have the authority to
9 create a different kind of agency in different areas
10 so that you could conceivably have in the Baltimore
11 City Metropolitan Area a regional government that
12 would exercise a great many powers and authorities and
13 over on the Eastern Shore not have any kind of regional
14 government at all but have a bi-county or tri-county
15 sanitary commission set up by the counties themselves or
16 a thing like the metropolitan district of Baltimore
17 County that was a separate authority limited to a
18 particular area.
19 In other words, the idea is not that in
20 differing areas you couldn't have some different kinds
21 of authorities but in the same area you should not have

1 a multiplicity of authority. Is that about the view,
2 Hal?
3 MR. CLAGETT: I would say that that tends
4 to clarify it. I would like to add here that where
5 you deal with subsection (b) and you note that civil
6 divisions specifically includes governmental authorities,
7 you must then go to 11.02, subsection (d) and there
8 take into consideration that we are providing the
9 General Assembly may authorize civil divisions other
10 than counties and municipal corporations to administer
11 single or multiple purpose functions that transcend local
12 boundaries, et cetera. Now it is the thinking of the
13 Committee as a whole that you would start out in all
14 probability with a single purpose function and then that
15 single purpose function might well be developed into a
16 multiple purpose function along the lines that Mr. Eney
17 has just said.
18 MR. SYKES: My question is, is there anything
19 in the Committee draft which would prevent the Legislature
20 from erecting four single purpose function authorities
21 instead of one multi-purpose authority with or without

1 a background of regional government?

2 THE CHAIRMAN: I think he would have to

3 answer that no.

4 MR. CLAGETT: I would answer it no but

5 add behind it that there is classification and where

6 classification is used properly within the definition

7 we have given to it not more than five and not less than

8 three, you have a guidepost or a guide line which would

9 tend to indicate that it might be the medium of

10 avoiding the changing or differing boundaries insofar as

11 the function or intergovernmental authority is concerned.

12 MR. SYKES: My last question is what is

13 the Committee's view as to the policy question of whether

14 or not the Legislature should be permitted to use several

15 single purpose authorities instead of a multi-purpose

16 authority in a given area or a regional government

17 which would be in effect a multi-purpose authority?

18 MR. CLAGETT: The view of the Committee is

19 that we do not want to restrict the General Assembly.

20 They will have the policy-making responsibility and

21 we do not want to mandate one as against the other

1 because the problem may be one that one would be
2 applicable and most applicable to rather than the other.
3 THE CHAIRMAN: Mrs. Freedlander.
4 MRS. FREEDLANDER: I don't want to disagree
5 with my Chairman but I think there was a difference in
6 opinion in regard to proliferation of districts. There
7 were some of us who felt we did not want to have more
8 districts than we have now, that we either wanted a
9 dormant organization that could be used or one that
10 could be created but under no circumstances did we want
11 a proliferation of authorities and districts.
12 THE CHAIRMAN: Dr. Burdette.
13 DR. BURDETTE: Mr. Chairman, I agree with
14 Mrs. Freedlander's point but I would like to emphasize,
15 if I may. We have a difference in the Committee. I
16 think the Chairman of the Committee reports precisely
17 the way the Committee vote came out for flexibility.
18 Now I am hesitant but I think I ought to say that over-
19 night I am coming around somewhat to changing my position
20 on this matter and I should like to say to the Commission
21 that I have done so because I have been doing some

1 homework from papers that within our own staff with
2 respect to a study of Prince Georges County.
3 I must say but I can't vouch for the accuracy
4 of the information given to me, I am simply shocked at
5 a statement regarding Prince Georges County that there
6 are 115 special purpose authorities of one kind or
7 another in that county. Now let me tell you why I would
8 be shocked at that. So far as I know, they are essentially
9 unrepresentative bodies. As a consequence in this
10 state it seems to me in the larger counties and as the
11 future goes to smaller counties, we have begun to
12 drain away from the representative power of local
13 government and responsiveness to the people great numbers
14 of particular purpose activities which I very much fear
15 will simply destroy representative form of government.
16 Now I have said that in the Committee that
17 we should leave this matter of flexibility to the
18 Legislature. One suggestion I should like to make,
19 I should say to the Chairman of the Committee speaking
20 quite specifically in 11.10 (b) that I should certainly
21 like to see the language somewhat amplified as to the

1 nature of regional government, at the very least
2 including the word representative. I am beginning to
3 lean overnight. I don't change my opinions lightly
4 but I am leaning to the opinion that we will simply
5 make a tremendous mistake if we don't do something to
6 encourage the Legislature,to point out to the Legislature
7 how it can make representative government really
8 function in this state.
9 THE CHAIRMAN: Any other questions as to
10 this section? Now, this section, as has been indicated,
11 poses both of the fundamental problems as to which
12 there is this divergence of views and I suggest that
13 you look at the other two memoranda because on the one
14 [illegible] issue of providing a dormant regional government
15 they are the same although they differ in detail.
16 I am not suggesting that the language of
17 any one of the three drafts is necessarily the language
18 you want, but if you will look at the one marked staff
19 memoranda, you will see that it starts by saying the
20 units of government shall be regions, counties, and
21 cities. The other one has the same notation except it

1 says that the power of local government other than the
2 judicial power and that is one of the matters I should
3 have mentioned. I think all of us are in agreement
4 that the judicial power should not be vested in local
5 government. We don't want town or county courts. But
6 this article says that the power of local government
7 other than the judicial power is vested in -- and then
8 there is a whole series of names you can give the
9 regions, counties and municipal corporations, so that
10 the difference fundamentally, there is the one says
11 the power of local government is in regions, counties
12 and municipalities, the other says the Legislature may
13 create regions.
14 Mr. Sykes.
15 MR. SYKES: Mr. Chairman, I would like to get the
16 easier question on the floor first and make the motion
17 that I indicated I would make yesterday and that is
18 to move to delete the last paragraph, the second
19 paragraph of subsection (b) of 11.01.
20 MR. SCANLAN: I second the motion.
21 MR. SYKES: My purpose in making the motion

1 is to propose to the Commission the alternative of
2 placing in the Legislature the power to merge and
3 change, create, and dissolve counties. I think it
4 fits in with the desire to create a strong Legislature
5 that is necessary to give the Legislature the tools to
6 deal with this most important problem and that to build
7 in a parochialism into the Constitution is a big mistake.
8 I think this is one situation where you are going to
9 have to trust the Legislature because if you don't
10 and you attempt to provide for what must be a local
11 veto, at least to some extent you are going to make it
12 impossible for the state to deal with statewide problems.
13 THE CHAIRMAN: Mrs. Bothe.
14 MRS. BOTHE: I wonder if Mr. Sykes would
15 be interested in accepting an amendment requiring
16 extraordinary vote of the Legislature.
17 MR. SYKES: That is a nice question. I am
18 not prepared to accept it at this point but it is an
19 interesting approach that I hadn't thought about.
20 MR. GENTRY: Might I ask a question here.
21 By the deletion of this whole paragraph, we would have

1 this whole paragraph, we would have then only the
2 general referendum powers by petition of any, and with
3 the required signature and so forth plus the referendum
4 that the Legislature would write into the enacting law
5 and that referendum which was written in, if one is
6 written in would be to the extent granted by the
7 Legislature, whether it be separate votes of the county
8 or one vote, is that right?
9 THE CHAIRMAN: I might say to you in further
10 statement that my remark yesterday that I said I thought
11 the Legislature had the inherent power to submit an
12 act to referendum, I am not certain that is the case.
13 But I take it that Mr. Sykes' motion would have the
14 effect that you have indicated, that is that there would
15 be no referendum except under the general referendum
16 provisions or special referendum if the Legislature
17 provided one assuming the Constitution authorized it to
18 provide one.
19 MR. SYKES: There is an article in the
20 Maryland law review that talks about the power of the
21 Legislature to submit to referendum and I think it

1 makes a distinction between delegation of a Legislative
2 power which the Legislature cannot do and legislating
3 upon a county, have an act to take effect upon a
4 certain event which the Legislature can do and I forget
5 how it came out. But there is some question, you are
6 right.
7 THE CHAIRMAN: Any further discussion?
8 Mr. Martineau.
9 MR. MARTINEAU: I would just like to make
10 the point that my experience with referenda matters of
11 changing city lines would lead me to believe that it
12 would be almost impossible to obtain a favorable vote
13 on a transfer of an area from one county to another.
14 The reaction of people on a vote like this is one of
15 fear of the unknown and that results in a negative vote
16 and for that reason I think if the second paragraph was
17 left in here, you are pretty effectively canceling out
18 the power granted by the first paragraph.
19 DR. JENKINS: I will say I am in favor of
20 this motion. Theoretically I am concerned with people
21 voting on the question. I am convinced that one of the

1 parties as I stated yesterday, the interested parties,
2 where a part of a county is concerned is the people in
3 it, who are being left and I think it would be virtually
4 impossible to get a three layer referendum and there
5 could be no change at all. I am in favor of this plus
6 the suggestion of Mrs. Bothe of an extraordinary vote
7 of the Legislature.
8 THE CHAIRMAN: Any further discussion?
9 DR. JENKINS: Which could be handled by
10 later amendment.
11 THE CHAIRMAN: Any further discussion?
12 You ready for the question? Mr. Sykes, you want to
13 consider further an amendment or do you want to stand
14 on your motion?
15 MR. SYKES: I would like to put it this way
16 with the understanding that it is subject to further
17 amendment, even if the motion passes.
18 THE CHAIRMAN: Before we vote, I would
19 like to state very briefly my own views. I think this
20 is a very, very sensitive area and I think we are
21 caught on the horns of dilemma of either giving the

1 Legislature the power to solve the problem or of
2 saying that the Legislature can't solve the problem
3 At the moment I recognize the necessity of protecting
4 the minority or the smaller counties against what may
5 be the overpowering desires of the majority. I some-
6 what hesitantly, but nevertheless without any more
7 hesitation than I have already indicated would favor
8 the amendment but I would also favor providing for an
9 extraordinary vote as the measure of added protection
10 to the county. Are you ready for the question?
11 DR. BARD: May I ask a question? Does the
12 motion call for an extraordinary vote?
13 MR. SYKES: No.
14 MRS. BOTHE: No, but the measure could do it.
15 DR. BARD: Could I offer an amendment?
16 MR. SCANLAN: That will clutter it. Let's
17 go back to it.
18 THE CHAIRMAN: Ready for the question?
19 MR. CLAGETT: Mr. Chairman, I think now we
20 have clearly in focus how the Committee has compromised
21 this question in the two provisions or three provisions

1 set out in this second paragraph of subjection (b).
2 I point out to you that where a new county is being
3 created and a large county is absorbing a small county
4 in its entirety it is a vote of all of the people in
5 the entire consolidated area which does give a degree
6 of flexibility. When tampering with less than a,
7 the creation of a new county, the protection provided
8 for here is for the referendum of that area which is
9 being moved into a new area. Where you go into more
10 than three counties the referendum required is a state-
11 wide referendum similar in effect to the permissive
12 referendum but it would be mandatory in that situation.
13 However, where the Legislature undertakes
14 a clean sweep and does an entire job, then there is
15 no restriction whatsoever insofar as mandatory
16 referendum but only for permissive referendum. In
17 fairness to the hours of discussion and the many points
18 of view of different members of the Committee, I feel
19 I must hold to the recommendation here being an effective
20 compromise between the two extremes.
21 MR. SYKES: I would like to close briefly,

1 Mr. Chairman, by saying I am afraid that the compromise
2 of the Committee is an unfortunate compromise because
3 it, as was said yesterday, gives some measure of
4 protection against petty larceny but no protection
5 against grand larceny and because it discriminates
6 against what Dr. Jenkins called the deserted wife.
7 If you are going to give a right of referendum, you
8 should give it even handedly and fairly to all the
9 elements affected. It is perhaps precisely because of
10 that that I suggest this issue is not compromisable but
11 it is presented in its stark form and we are going to
12 have to decide whether the Legislature is to be given
13 the power or is not to be given the power and if the
14 Legislature is not to be given the power, there is to
15 be a referendum then that referendum ought to be fairly
16 and equally given to everybody who is affected by it.
17 I think that the second alternative is
18 wrong and I impractically and the only, the position
19 that we are driven to is the position of the motion.
20 THE CHAIRMAN: Any further discussion?
21 Are you ready for the question? The question arises

1 on the motion to strike the second paragraph of
2 Section 11.01(b), a vote aye is a vote in favor of
3 striking that paragraph which leaves the complete power
4 in the Legislature to alternate counties without any
5 referendum.
6 All those in favor, please signify by a
7 show of hands. Contrary? The motion is carried thirteen
8 to five. Mr. Scanlan.
9 MR. SCANLAN: I would like to offer an
10 amendment and no particular choice of language but it
11 would refer to Section B, the section immediately
12 above the one that we have just now deleted. Insert the
13 appropriate language in providing for the counties and
14 other civil divisions, et cetera, this would have to
15 be done by an extraordinary vote, being careful in
16 selecting the language not to provide for an extraordinary
17 vote, to be applicable to the second part of the power
18 granted, That is providing for a method of creating and
19 so forth, That could be done by simple majority, The
20 other power creating civil government should be done
21 by extraordinary vote. I find myself voting consistently.

1 I voted against sovereignty for the University of
2 Maryland yesterday and against counties today. It
3 is an ironic vote.
4 THE CHAIRMAN: May I ask this question of
5 you. Does your motion go to the creation of regional
6 governments as well as changing of counties?
7 MR. SCANLAN: Yes, I think the principle
8 would hold there.
9 THE CHAIRMAN: Is there a second?
10 MRS. FREEDLANDER: I second.
11 THE CHAIRMAN: Discussion? Mr. Scanlan.
12 MR. SCANLAN: The Committee labored hard
13 to compromise with Mr. Sykes, what he calls an uncompromisable
14 situation. I have the feeling that the people of the
15 areas affected should have some voice. The only voice
16 they have is in the representatives of the people.
17 Again I think it should be a voice entitled to greater
18 weight than just simple numbers would provide and to
19 that extent I am willing to protect the areas affected
20 by requiring an extraordinary vote;that it really be
21 something of a substantial majority of the people of this

1 state need and want. If it is that important, if it
2 is that desirable, I think the vote can be obtained.
3 If it isn't that pressing, if it isn't that desirable,
4 if it isn't that necessary then I think the extraordinary
5 vote will protect against capricious use of this very
6 awesome power however necessary it may be.
7 THE CHAIRMAN: Mrs. Freedlander.
8 MRS. FREEDLANDER: Although Mr. Scanlan's
9 motion is directed toward getting the two-thirds
10 vote, the extraordinary vote, there is a more basic
11 policy question involved in this which you raised in
12 your presentation and which there was a difference within
13 the Committee and that is whether or not we want to
14 make regional government and intergovernmental authorities
15 and including, or whether or not we want to take what
16 the staff memoranda suggested and that is to provide
17 for a tripartite arrangement of regions, counties and
18 cities even though the regions may remain dormant until
19 necessary and which would avoid intergovernmental
20 authorities and proliferation of them because the region
21 would be the receptacle into which all extra governmental

activities would go. That's the basic question; although your motion is directed to extraordinary, would it be in order to discuss both or is that a supplementary?

THE CHAIRMAN: I think if we hold the discussion to this one point, we can come to the other question as a separate matter. Had you finished your comments?

MRS. FREEDLANDER: Yes.

MR. SYKES: That was the question I wanted to raise. I wanted to make sure there was nothing in this vote which was going to tie us up on the independent consideration of the question of regional government.

THE CHAIRMAN: I would think not. Dr. Bard.

DR. BARD: I am concerned about the inclusion of regional government and intergovernmental authorities and I can't help but think of the problems that came into being when we attempted to organize the Maryland Port Authority and the Maryland Transit Authority when one county was forecful enough really to have kept it out if it had actually required a two-thirds majority. Let me ask the maker of the motion whether he would be

1 willing to just have it embrace creation of counties
2 and creation of counties really, changing county lines.
3 MR. SCANLAN: Not apply to regional govern-
4 ments. We will, for the moment, I will accept the motion
5 because we are coming back to your remarks, Mr. Chairman.
6 I will accept the amendment, it is directed
7 to the creation of counties.
8 MRS. FREEDLANDER: And altering events.
9 Just county and county changes.
10 THE CHAIRMAN: Senator Hoff, you accepted
11 the motion, do you accept the change?
12 MR. HOFF: I didn't accept it.
13 MR. MINDEL: Suppose we are creating a new
14 county, creating a county that would require an extra-
15 ordinary vote. Suppose in the process of doing that
16 you are dissolving a county and you say you do not
17 want that to apply to the second part. Where are we?
18 MR. SCANLAN: No, I didn't state that.
19 THE CHAIRMAN: Let me state the motion. The
20 motion, as I understand it, that in order to create,
21 dissolve, or alter the boundaries of counties, an

1 extraordinary vote would be required.

2 DR. JENKINS: The wording is in the

3 staff memo, creation, changing, dissolution, a wording

4 rather --

5 THE CHAIRMAN: That's right, except if you

6 eliminate from Paragraph B of the staff memo the word

7 regions and say subject to an extraordinary vote you

8 would have the principle of the motion --

9 Mr. Brooks.

10 MR. BROOKS: I would hope the Commission

11 would consider very carefully its use of extraordinary

12 vote. Personally I am very appalled at the exceedingly

13 anti-legislature attitude of the Commission. It is the

14 one area where there has been no faith really, no

15 appreciable faith put in the General Assembly. I don't

16 think an extraordinary vote is a compromise in government.

17 What we have said when you examine thewhole list of

18 extraordinary votes being required is first, that we

19 really don't have a great deal of faith in a democratic

20 process where the majority can make decisions and second,

21 that in every case where one would expect there to be

1 an honest differing of opinions, it should be particularly
2 difficult to have to reach a decision in the resolution
3 of the problem.
4 We can tell by just examining and if you
5 will think about the legislative process, it works the
6 same way, examining the votes of this Commission on
7 issues that are controversial. It is very seldom that
8 you get a lopsided vote on a controversial issue. This
9 doesn't occur in the General Assembly either and I think
10 it is a very serious problem that we have provided
11 extensively for extraordinary votes.
12 I think it is very unrealistic and it
13 is just as bad as the second paragraph that was
14 written in here. I think we should really seriously
15 consider whether this is any solution to the problem
16 at all and whether or not we really want to indicate
17 that we should tie the hand of the Legislature and the
18 majority of the Legislature in doing whatever we think
19 they should have the authority to do. We have already
20 provided for on every vote what has proven in the history
21 of Maryland to be an extraordinary vote. The Maryland

1 Legislature requires a constitutional majority which
2 is in fact an extraordinary vote of a kind. It is very
3 seldom that all legislatures are present or that there
4 are not either advanvacancies in the legislatures
5 or some of the members are not out attending to other
6 affairs in which case, in fact, there is an extraordinary
7 vote. It requires more than a majority of those present
8 and the requiring more than would seem to really hamper
9 the legislative process.
10 DR. BURDETTE: I should like to say why I
11 support this motion and perhaps in a direct answer to
12 Mr. Brooks' position. I have never personally lived
13 in a state in which there is such diversity of interests
14 at times in rather small sections. Now I run upon the
15 assumption that human nature being what it is, people
16 give more attention to their own immediate interests.
17 I do not live on the Eastern Shore, for example, and to
18 me many of the individual problems of local government
19 on the Eastern Shore are vague and distant. But if, for
20 instance, the changing of county boundaries upon the
21 Eastern Shore would discourage the order of government,

1 I should support the view of an extraordinary majority.
2 I, therefore, support this system of extraordinary
3 majorities for a state where there is great diversity
4 coupled with some underpopulation in some of the key
5 areas of that diversity. I do that because I think
6 that if we should get the state into an area of bitter-
7 ness, not so easily acquired in states in the West, for
8 example, where the basic economy is often quite similar,
9 I think we have made a great mistake. We have this
10 problem in Montana where there is bitterness between
11 the western mining and eastern grazing. I don't think
12 we ought to get a type of bitterness that runs so
13 deep within the roots that might happen without an
14 extraordinary majority.
15 THE CHAIRMAN: Mr. Clagett.
16 MR. CLAGETT: Mr. Chairman, I am going to
17 vote in opposition to the provision for extraordinary
18 majority and would like to explain why. In the compromise
19 which has just been voted down thirteen to five providing
20 for a referendum, there was protection to the area
21 directly affected and that was what I was anxious to see

1 protected.

2 As a practical matter I do not think that the
3 General Assembly would be acting in this field at all
4 unless there was some demand coming from the particular
5 area. And when the General Assembly would undertake to
6 act it would be because of the pressure being brought to
7 bear upon it from that area. But I am still anxious
8 to protect those other persons who were of an opposite
9 view.

10 Now if you are going to disregard the
11 immediate area, then I do not feel that the General
12 Assembly should be restricted,and if the General Assembly
13 is going to act, then it should be free to act on a
14 majority rather than on an extraordinary, because it
15 will be acting then in the interests of general
16 policy throughout the state. And if you are not going
17 to protect the immediate persons directly affected,
18 then the over-all public interests should not be restricted.

19 THE CHAIRMAN: Any further discussion?
20 Before the debate closes, I would like to state very
21 briefly my own views on this.

1 First off, I would say that normally I
2 would agree wholeheartedly with the remarks made by
3 Mr. Brooks. I think in theory he is absolutely right,
4 and I think that in most instances in practice that is
5 the principle that should be followed. I would
6 not follow with him in this case, however, because it
7 seems to me that the state is just emerging from a
8 situation where to use the hacknied phrase,the Legislature
9 has been subject to rural domination and it is now
10 entering a phase where I think it can and will be said
11 that the Legislature is subject to urban domination.
12 I don't know that I would say I am afraid
13 of the tyranny of the majority because I am not. What
14 I do fear is that there could be in such a Legislature
15 a brushing aside of purely local interests that meant
16 a great deal and were vital to the people affected
17 and yet were not really of enormous importance to the
18 state as a whole.
19 I can see that in the area where Legislature
20 may be considering abolishing or changing the boundaries
21 of counties on the Eastern Shore or in Southern Maryland

1 or in Western Maryland where the representation is slim,
2 that they tend to brush aside the purely local
3 sentiment and tradition and whatnot. I think where the
4 state interest is such that it must be paramount that
5 then the majority must rule. That is why I would favor
6 this motion providing for an extraordinary vote to
7 change counties but would not favor such a motion to
8 limit the power of the Legislature with respect to the
9 creation of the regional governments.
10 In the latter case I think the interests
11 of the state would become paramount. Any further
12 discussion? Are you ready for the question? The
13 question arises on the motion to amend Section 11.01 (b)
14 so as to provide that the creation and incorporation,
15 changing, merging and dissolution of counties will be
16 accomplished only by only an extraordinary vote of the
17 Legislature, the extraordinary vote to be defined later
18 when we deal with that subject.
19 Ready for the question? All those in favor
20 of the motion, that is, in favor of the extraordinary
21 vote, please signify by a show of hands. Contrary?

1 The motion is carried fifteen to three.

2 MR. CLAGETT: Mr. Chairman, I don't want

3 to beat a dead horse but I do want to bring out the

4 possibility of a conflict between the action just

5 taken on no restriction with respect to the forming of

6 regional governments. It is conceivable, it seems to

7 me, that three or four counties would have their lines

8 dissolved and be formed into one or into a region or

9 district or borough or department or whatever name you

10 may give to it and in that case you would have the

11 restriction by reason of the action just taken.

12 If you don't take that action, you could

13 conceivably have a situation where you are creating a

14 regional government and then by reason, without restric-

15 tion and then by reason of the restriction the

16 counties wither and die on the vine because of the

17 built-in restriction here. In my thinking, if we are

18 going to have counties, then the counties should be an

19 active viable unit of government. It should not be one

20 which has its powers drained away into some separate

21 superimposed entity or let me put it this way, some

1 entity superimposed upon it. It should be the transition
2 into another form of government rather than a separate
3 and distinct government.
4 So we have got the possibility here of
5 rigidity insofar as change of county lines are concerned
6 but great freedom insofar as creating a new and distinct
7 government superimposed upon the county structure.
8 THE CHAIRMAN: I would think that the
9 purport of the last motion and the fact that it was
10 limited to counties would indicate the intention that
11 in phrasing what would probably end up as two sections
12 that the Legislature's power to create regional
13 governments by majority vote would be paramount over
14 the provision with respect to the changing of county
15 lines requiring an extraordinary vote.
16 But I don't want to make that assumption.
17 I think that it would be better if this were stated by
18 someone in the motion so that we can see if in fact
19 this is the desire of the Commission.
20 MR. SYKES: Mr. Chairman, I would think that
21 it would be better before making -- I think it should

1 be open to make that motion but before making that
2 motion, I think we should have a clearer picture of the
3 kind of provision we want as to regional government.
4 THE CHAIRMAN: Let's come back to this
5 question then later on.
6 MR. SYKES: I would like to make a motion
7 if I may, to raise another of the policy questions in
8 a limited form, take it step by step.
9 My position would be that the provision be
10 amended so as to make clear by appropriate language that
11 in any given area which is subject to a form of govern-
12 ment transcending a county that there only be one such
13 form of governmental unit for no matter how many
14 governmental functions to be exercised by supergovernmental
15 unit in that area. What I have in mind is the chart in
16 the Committee on economic developments monograph on
17 improving issue and government which shows in the state
18 of Minnesota, I believe, one territory which has fourteen
19 or fifteen different authorities, intergovernmental
20 authorities exercising governmental powers in that
21 territory.

1 That territory is in a particular town which is in a
2 county and it has one school district and another water
3 district and another sewage district and it, of course,
4 has the general state and federal governments and it
5 creates terrible confusion and overlapping. That is
6 my position.
7 THE CHAIRMAN: All right, if I understood
8 the motion, it is to, in phrasing the provision authoriz-
9 ing the Legislature to create regional governments and
10 intergovernmental authorities to so phrase it that
11 there may be only one such authority in any given
12 area exercising the functions or powers which transcend
13 county lines.
14 MR. SYKES: Yes, sir.
15 MRS. FREEDLANDER: I second and I would like
16 to speak to it, if I may.
17 THE CHAIRMAN: All right.
18 MRS. FREEDLANDER: I feel that the staff
19 memoranda, (a) and (d), to some extent cover this. It
20 needs some polish but it establishes what the unit should
21 be, and it states unequivocally there should be no others.

1 There may be a way of phrasing this into one or two
2 sections but I think essentially that is what your
3 intent is, isn't it, Mr. Sykes?
4 MR. SYKES: No, it is not and the reason
5 that section (a) and (d) in our staff memo of October 24,
6 1966, which I think is the one you refer to,goes one
7 step beyond my motion and it bites off more than I bit
8 off. That section in the staff memoranda says the
9 only intergovernmental authority that can be created
10 is a region and I am impressed with the idea that
11 regions may not be appropriate, regional governments
12 for some areas of the state and that you might want to
13 create an ad hoc intergovernmental authority for one
14 function in some area of the state and just leave it that
15 way. I think that there is at least a strong argument
16 that the position of the staff memoranda is too rigid
17 and rather than bite off that much, I just want to make
18 clear the principle of nonproliferation of authorities
19 and regional governments in a particular territory.
20 MR. CLAGETT: Mr. Chairman, I would like
21 to follow up what just has been said here because you

1 will recall I drafted something that came up in the
2 Committee along that line and it read, the General
3 Assembly shall have the power to create intergovernmental
4 authorities to administer single or multiple purpose
5 functions or services which shall transcend local
6 boundaries and only one such authority shall be established
7 within a geographic area or region. Then it went on
8 into providing that the state shall be divided into
9 no more than five regions but there specifically was an
10 effort to accomplish what you are suggesting and that
11 is placing a limitation upon the number of single or
12 multi-purpose authorities but leaving open the single
13 to grow into the multiple.
14 THE CHAIRMAN: Mr. Mitchell.
15 MR. MITCHELL: I have a question. I think
16 I am very much in favor of Mr. Sykes' motion and the
17 theory behind it but I am concerned about a situation
18 where one district might be affected or might require
19 a sanitary supergovernment or regional government but
20 it might belong to a larger area which might, all of
21 which area might be affected by the antipollution problem.

1 For example, Prince Georges, Montgomery, and Charles
2 might fit together in a sanitary district but to have
3 an effective local regional governmental unit dealing
4 with the pollution of the Potomac River would require
5 all the counties adjacent to it. Now I am wondering if
6 any thought has been given to that problem in the
7 thinking of this, or confining it to one geographical
8 area rather than a function.
9 THE CHAIRMAN: Let Mr. Sykes comment on
10 that, if he wants.
11 MR. SYKES: My answer to that is that I
12 view the intergovernmental authorities as stepping
13 stones and the problems of these areas as inter-related.
14 Pollution, which is the example you chose, can't
15 really be divorced from sewage and if an area is one, for
16 the purpose of pollution, then I would think that other
17 functions within that area can be handled by the
18 existing framework, that intergovernmental authority
19 might have two divisions but I can't, and one of them
20 might deal with the pollution aspect and the other the
21 sewage aspect and the more limited territory. But I am

1 just afraid of the tremendous proliferation that would
2 occur if you didn't do it that way.
3 THE CHAIRMAN: Mr. Miller.
4 MR. MILLER: My thoughts were somewhat guided
5 by what has been said here. If you limit any area to
6 being in one authority now at the present time we have
7 a Chesapeake Bay Authority which perhaps involves
8 probably eight or ten counties at least and if you
9 pass this limitation, important as it is, not to have
10 a multiplicity, I would gather that that would forbid
11 any region being set up in any of the counties or you
12 would have to do away with the Chesapeake Bay Authority.
13 THE CHAIRMAN: Mrs. Freedlander.
14 MRS. FREEDLANDER: In Committee we spent
15 endless hours talking about giving counties, county
16 home rule and expanding and letting them grow freely
17 and we also talked about the districts but the prolifera-
18 tion is not only a problem in and of itself that it is
19 to say that numbers of districts is not the only
20 problem, there is a second problem and that is when
21 you suggested to Mr. Sykes, ad hoc committees or districts

1 you are eliminating the provision of representative
2 government. What we think of when we talk about a regional
3 government or Mr. Eney's report that calls it a district
4 is that these people should be beholden to the citzenry.
5 Whatever you create or whatever name you
6 call it, there should be representative government from
7 the counties that are within that and this is a very
8 important aspect so that the people have something to
9 say. The New York Port Authority is a case in point
10 where they do what they want to do. They establish
11 the rates, they take whatever action they want to do.
12 They establish the rates, they take whatever action
13 they want and the people be damned and this is an
14 important aspect to this.
15 MR. SCANLAN: I oppose this motion. I
16 oppose it because it imposes rigidity in an area where
17 we want flexibility. I agree that from the theoretical
18 standpoint of sound public administration it is best to
19 have a single agency rather than many and the prolifera-
20 tion should be avoided usually. On the other hand, one
21 of the geniuses of American government is the politician.

1 We can try various ways to solve different
2 problems. It seems to me that before we tie the
3 Legislature's hands and say, before you can establish
4 any type of authority, it has to have, you are going to
5 establish one regional authority, it has to have all the
6 powers of government to be exercised in this territory,
7 I think you are incorporating into the Constitution a
8 matter of public administration that shouldn't be
9 there. Again I would like the Legislature left free to
10 cope with the problems of the future. In their wisdom
11 hopefully they will not proliferate but if it becomes
12 necessary to proliferate at least in the early
13 stages of development of regional government then so be
14 it.
15 JUDGE ADKINS: I was too curious to know,
16 if I understand this motion, it would mean that other
17 authorities could not be created after the adoption of
18 a regional form of government for the area involved. It
19 would not prevent the creation of authorities prior to
20 the time the regional government was adopted.
21 MR. SYKES: That is correct.

1 MR. HARGROVE: Mr. Sykes, does your
2 motion preclude two regions from working together
3 because I think in discussing a situation here where we
4 virtually say no two regions can cooperate with each
5 other if there is a common problem. Is that the
6 extent of it?
7 MR. SYKES: Oh, no, the provision for
8 intergovernmental cooperation, cooperation between
9 governmental units, voluntary cooperation would still
10 apply.
11 MR. HARGROVE: If that be the case, to
12 answer Congressman Miller's question, is it conceivable
13 that all regions affected by a common problem could work
14 very closely together on this particular problem without
15 destroying the structure pretty much of your motion.
16 MR. SYKES: I think that is true.
17 THE CHAIRMAN: Mr. Hoff.
18 MR. HOFF: I can't help but agree with
19 Mr. Mitchell and Mr. Scanlan. This is too limiting, too
20 confining. It is easy to imagine the necessity of creating
21 a transit authority, let's say, including the District

1 of Columbia and Baltimore City and extending the entire
2 length between those two metropolitan areas. But what
3 would that have to do with, say, the Potomac River
4 pollution authority which would extend up to Garrett
5 County and include the entire area of Western
6 Maryland but would have nothing at all to do with the
7 City of Baltimore and any area, let's say, between
8 Baltimore and Washington. The water authority, sewer
9 authority -- water authority may be necessary sometime
10 in the future but I can certainly see that the water
11 situation in Baltimore City with its drainage into the
12 Susquehanna River and its various ponds and lakes and
13 dams is an entirely different thing from the City
14 of Washington where they get their water from the Potomac
15 River. I think the idea is fine but in practice I am
16 just afraid it is going to either prevent the effective
17 use of regional authorities or create such a monstrous
18 regional authority that it will by then encompass the
19 whole state.
20 THE CHAIRMAN: Dr. Bard.
21 DR. BARD: I would like some clarification

1 in respect to the motion. To begin with, as I see it,
2 what we are attempting to do is to get within a compact
3 region that we might think of perhaps as a metropolitan
4 region some unification of purpose and have progress.
5 Now the last few discussions lead me to
6 believe that this motion will cut off the opportunity
7 to go beyond the compactness if the necessity for a
8 particular requirement goes beyond that region geographically
9 I didn't think the motion really meant that. Could I
10 get a re-reading of the motion?
11 THE CHAIRMAN: The motion is to so phrase
12 the provision in this section dealing with the creation
13 of regional governments and intergovernmental authorities
14 as to provide that there should be not more than one
15 such regional government or authority exercising functions
16 of government or powers of government in any one area
17 at any one time.
18 DR. BARD: It needs some refinement.
19 THE CHAIRMAN: Mr. Martineau.
20 MR. MARTINEAU: I would like to suggest an
21 amendment to that which would enable the Legislature to

1 create single purpose authorities which transcend
2 regions. In other words, they couldn't create one which
3 would operate solely within a region for the regional
4 government but they could create an authority which
5 would operate in two regions.
6 In other words, the Potomac River problem.
7 You could have a Potomac River Authority which would
8 have the authority and control of the water pollution
9 in the Potomac River and this would necessarily cover
10 several regions and could not be effectively dealt with
11 by any one regional government.
12 MR. SYKES: I would accept the amendment
13 gladly. I was getting to the point where the debate
14 was convincing me that the motion could still be put
15 but that I would vote against it. I think that this
16 amendment eliminates a lot of the objection. I am not
17 sure it eliminates all but there seems to be some kind
18 of fundamental inconsistency between intergovernmental
19 authorities and regions at all and maybe you are going
20 to have to wind up making a choice between them. But
21 the amendment is a distinct improvement.

1 MR. MITCHELL: I will second it.

2 MRS. FREEDLANDER: Doesn't that mean a

3 proliferation again? You would have a district over a

4 region.

5 MR. MARTINEAU: It is a proliferation but

6 it is going to be a narrow one because you will not have

7 that many problems that will transcend the regional

8 problem, the regional government.

9 MR. SYKES: If you don't do it, you prevent

10 a problem of government from being solved.

11 MR. SCANLAN: The amendment in my mind

12 confirms the lack of wisdom in the original motion. We

13 are writing a Constitution here, gentlemen, not drafting

14 a text book on sound public administration and Mr.

15 Martineau has added a foot note to your fine paragraph

16 on what should be sound public administration, but I

17 think we should avoid the rigidity of a text book in

18 the Constitution.

19 THE CHAIRMAN: Mr.Clagett.

20 MR. CLAGETT: I want to completely and

21 wholeheartedly say amen to just what was said by Mr.

1 Scanlan. I tried drafting just what Mr. Sykes has
2 suggested and abandoned it when I began to run into the
3 very problems that we have now illustrated where you go
4 from the provision for transcending county lines and
5 then you go into regions and you start transcending
6 the regional lines and so on you go, ad infinitum.
7 Perfectly frankly, I think we are beginning
8 to get into focus the question of whether or not we
9 want to provide for regional structural representative
10 government or not and I think ultimately we are going to
11 appreciate that the choice is going to be between an
12 approach along that line or the approach along the line
13 of the intergovernmental authorities, the provision for
14 regional government when and if that day should come.
15 But in the meantime with a degree of elasticity
16 insofar as classification is concerned and a degree of
17 elasticity insofar as 11.02 subsection (d) providing
18 for the General Assembly to utilize the civil division
19 and whatever that form shall be as time and circumstance
20 and problem shall define it; to take care of the problems
21 that transcend local boundaries and to utilize the degree

1 of resourcefulness, to continue to use the degree of
2 resourcefulness insofar as moving toward something
3 else as it may be defined in the future with a little
4 purer appreciation than we can quite see it now.
5 MR. BROOKS: Unfortunately, there seems to
6 be two different questions being debated at the moment.
7 One is whether there should be regional or intergovern-
8 mental authorities and the other as to whether or not
9 they should be limited in aspect. The problem of a
10 proliferation of intergovernmental authorities has been
11 referred to on at least three occasions as a problem of
12 the future.
13 Unfortunately, it is a problem of the
14 present. It is one that we receive numerous complaints
15 about at the moment, the fact that present existing
16 intergovernmental authorities are not cooperating with
17 each other and the appointing agents or authorities of
18 the people who are on the authorities have no control
19 over the authorities which brings into focus another
20 problem which is whether or not the authorities should
21 be in any way representative. Unfortunately, the motion

1 on the floor deals with primarily regional, excuse me,
2 intergovernmental authorities using the term that they
3 are not really a great number of political problems
4 inherent under the motion that is proposed,in that
5 as soon as one authority is created for a specific
6 purpose, you then have the problem of reorganizing
7 that authority whenever you want to assign to it a
8 second purpose, in that most authorities are appointed,
9 so to speak, specialists or people with particular
10 interests to deal with the problem for which the
11 authorities are created.
12 When it is assigned, the second function ,
13 you immediately have the problem of whether or not you
14 want any people on that authority who have some special
15 competence in the new task assigned to it. So you have
16 to reorganize the authority. Then you have to repeat that
17 when you assign it a third function.
18 Also under the motion as proposed, you also
19 have the problem that the General Assembly may create
20 that authority and thus may completely control the
21 membership of the authority with all the functions

1 assigned to it which is the reason for proposal that
2 is in the staff memo that there be rather than an
3 authority, some kind of provision for the creation of
4 some kind of governmental structure that would be
5 representative in character and that could create and
6 set up a smaller government with as few personnel or as
7 many required to deal with the various tasks which
8 should be dealt with on an intergovernmental basis.
9 THE CHAIRMAN: Mr. Miller.
10 MR. MILLER: There might be some way of
11 side-stepping this by the Legislature providing for
12 the creation of commissions independent of regional
13 authority. For instance, we have a State Roads Commission
14 that is statewide and tends to all the roads. I, for
15 many years, advocated a State Water Commission on the
16 same basis of obtaining the water of the Chesapeake Bay
17 without having to fall back on the government.
18 Could we have this limitation on regional
19 governments and at the moment leave the door open so
20 that the Legislature could appoint a Water Pollution
21 Commission that would be similar to the State Roads

1 Commission and administer that particular problem.

2 MR. CLAGETT: I think that is exactly what

3 is meant by the phrase civil division. It does

4 emit that possibility. In other words, it emits of

5 that possibility along with any others that may even

6 be better as time and circumstance may require in the

7 future.

8 MR. HARGROVE: I think what we are really

9 doing, we are delving into the unknown again. I think

10 we have not dealt with regional governments in the

11 past but yet we are attempting to anticipate what the

12 problems will be because we operate under a system

13 today of a lot of proliferation of agencies within

14 both the local and state government.

15 I think here is a chance really to let the

16 Legislature operate. I agree with Mr. Scanlan 100 per

17 cent. I think that is their responsibility to determine

18 in the future just what intergovernment authorities are

19 needed. We don't know what will happen 15, 20, or 30

20 years from now but if we should say only have one such

21 authority, then what Mr. Brooks has said comes into play

1 very seriously, that you keep creating within one authority
2 a hybrid. You get 10, 15, 16 different authorities into
3 one. You merely give lip service to the Constitution
4 but creating chaos in the end.
5 I think what we really want is regional
6 intergovernment agencies and leave it there and let
7 the Legislature go from there and put our trust in the
8 Legislature. I think I would be against the motion as
9 it is amended because it ties up the Legislature in the
10 future forever.
11 MR. MITCHELL: Mr. Chairman, I think I see
12 the need of a regional government and I think an example
13 would be, if I may again cite my home county of Prince
14 Georges and Montgomery. We have two bi-county agencies.
15 I am sure everybody has heard of them, the Washington
16 Suburban Sanitary Commission and the Park and Planning
17 Commission and these, I think these two agencies are
18 valuable but there is nothing to require any coordination
19 between these two agencies.
20 I think that in order to require that,
21 and I think that is becoming more important, it would

1 be necessary under the existing framework or that
2 suggested by Mr. Hargrove to appoint a supercommission
3 over the two of them. Now another thing as the popula-
4 tion of those two counties increases, then their tolerance
5 increases and there is no direct representation or
6 we lose the right to vote for the membership of these
7 two Commissions.
8 I think, I don't like that -- I would like
9 to have a vote of the members of those Commissions.
10 I think that points out the need of a regional
11 government based on experience and what I observe day by
12 day and yet, I don't think that solves all the problems
13 so for that reason I think that I am going to vote for
14 Mr. Martineau's amendment.
15 MR. BROOKS: Excuse me. One point of clari-
16 fication. I think several remarks would indicate that
17 some are under the assumption that only the General
18 Assembly can create intergovernmental authorities.
19 Of course, under this provision, there is no restriction
20 against the present practice of not only the General
21 Assembly but all the other governments in the state and

1 municipal and county creating intergovernmental
2 authorities. This is part of the problem. So it is
3 really not an issue of just leaving it up to the
4 General Assembly to make some systematic solution out
5 of the chaos that exists.
6 THE CHAIRMAN: Except, of course, that
7 that is subject to the exercise of the Legislative power
8 to say no because that section is subject to the
9 expressed provision that it can be prohibited by general
10 law.
11 It seems to me this debate has highlighted
12 very well the dilemma that is confronting the Commission
13 and will ultimately confront the Convention, as I
14 mentioned earlier.
15 I think we would all agree that a prolifera-
16 tion of various authorities in the same area performing
17 different functions is highly undesirable and I think
18 we are all also in agreement with the notion that none
19 of us sitting here today has enough wisdom and forsight
20 to say that the government of the future should be along
21 certain lines and no other.

1 I would certainly favor a provision that
2 would give not only the Legislature but the county
3 governments and the people the right to call into being
4 a regional government to exercise all these functions.
5 It seems to me, however, that it is very risky to insert
6 a provision that ties the hand of the Legislature and
7 perhaps puts restrictions on its ability to solve the
8 problems that we are trying to give the authority to
9 solve.
10 I point out to you also that Mr. Sykes'
11 motion originally and as amended in accordance with
12 Mr. Martineau's suggestion, makes an assumption which
13 isn't a valid assumption at the moment and that is that
14 there will be regions and regional governments created.
15 There may not be regions. Hence you would have a provi-
16 sion that would say you couldn't have authorities
17 created to serve different functions and overlapping
18 areas and let's say overlapping regions and there may
19 be no regions to overlap.
20 It seems to me on balance that this is an
21 area where we will hope and should hope that the

1 Legislature will prevent proliferation. Nevertheless
2 we shouldn't tie their hands. Any further discussion.
3 Mr. Sykes.
4 MR. SYKES: I would like to close by saying
5 I am convinced the motion is a bad one and I will vote
6 against it. I think the discussion has, as the Chairman
7 said, highlighted the fundamental question which is
8 the relationship between regions and authorities and
9 that the protection which should be granted against
10 proliferation will come in the consideration of the
11 relationship between regions and authorities and it may
12 be that that protection would be that where there is
13 a regional government there can be no authority exercising
14 power within the confines of the region except if the
15 authority is dealing with the problem that transcends
16 the boundaries of that region. But that is another
17 question for another day.
18 I am convinced that you can't do it by the
19 way the motion tried to.
20 THE CHAIRMAN: Mr. Martineau.
21 MR. MARTINEAU: As the proposer of the amendment

1 to the amendment, I will agree with Mr. Sykes and will
2 vote against the motion.
3 THE CHAIRMAN: Ready for the question?
4 MR. CLAGETT: I believe we are beginning
5 to narrow as we pointed out.
6 THE CHAIRMAN: Ready for the question?
7 DR. BARD: The question.
8 THE CHAIRMAN: The question arises on the
9 motion to provide in the rewritten provision with
10 respect to the creation of regional government and
11 intergovernmental authorities that no more than one
12 authority shall be given the power to exercise functions
13 in any one area at any one time.
14 Ready for the question? All those in favor
15 of the motion, signify by a show of hands. Contrary?
16 The motion is unanimously lost.
17 We still should stick, I think, with this
18 section and resolve the other policy questions that are
19 inherent in it. Anyone have any further motions to
20 make?
21 MR. BROOKS: For one comment this isn't a

1 Webster's,but I think it is a pretty reliable dictionary,
2 just to call to your attention that definition of city
3 here is an incorporated municipality; just to suggest
4 that city in itself is a term that can be used to
5 mean what we are defining municipal corporation to mean
6 in the first section so that we can avoid a great deal
7 of difficulty if we use city in lieu of municipal corpora-
8 tion to represent the subdivisions within a county.
9 MR. SCANLAN: How would you define village?
10 MR. MILLER: The only objection I would have
11 to that is that we are writing this for the general
12 public and to the general public , for instance, there
13 are many cities in this state that call their officials,
14 town officials and I have an idea that they would would
15 consider a city something over ten or 15,000 people
16 and that is not the right definition apparently, but
17 I am not sure it wouldn't confuse.
18 THE CHAIRMAN: Mr. Sykes.
19 MR. SYKES: I think I will make the next
20 motion. There is a conflict between the staff memoranda
21 and the provision of the Committee draft with respect

1 to whether intergovernmental authorities may be permitted
2 in addition to regions. I personally would favor the
3 Committee draft and permit both types of government.
4 I don't think a motion is necessary for that but if
5 we do have both kinds of government in the state, there
6 has to be some provision, it seems to me, defining the
7 relationship between them, if the provision for
8 regional government is to have any sense and if the
9 proliferation that we all want to avoid is to be avoided.
10 So I would move that the, that language
11 be added which in substance would provide that if a
12 regional government is activated, that no authority could
13 be appointed to exercise functions, governmental functions,
14 within that region unless it is an authority which
15 exercises functions transcending that region.
16 JUDGE ADKINS: That is what we voted on.
17 THE CHAIRMAN: It seems to be the same
18 problem.
19 MR. SYKES: Oh, no, there is a distinct
20 difference. The motion dealt with a situation where,
21 for instance, you might have no regional government and
two authorities, an authority dealing with two counties

1 for sanitation and with eight counties including the
2 two for pollution. I agree that it would make no
3 sense to say that the Legislature couldn't do that.
4 But then the question is now what is going to be the
5 nature of the regional government that is to be set
6 up. Once you set up a regional government, are you
7 going to permit authorities to operate within the region
8 so you are going to have a so-called regional government
9 given transportation authority, for example, and then
10 in the same region, are you also going to have the
11 Legislature appoint an authority relating to another
12 aspect of government, sewage in two counties and parks
13 and recreation in three counties, all of which are
14 governed, supposedly, by a regional government.
15 If you don't, the point of this motion is
16 that if you don't make some provision defining the
17 relationship between regional government and authorities,
18 you are going to make, create the possibility that
19 regional government will actually be a misnomer. I
20 don't think it is the same question.
21 THE CHAIRMAN: Mr. Sykes, let me point out

1 that your discussion is an assumption which is not an
2 entirely valid one and that is that a regional government
3 is a complete government. We are talking, the general
4 debate has indicated that you may be thinking of
5 regional government that is perhaps more accurately
6 called an authority because it only exercises one or two
7 functions.
8 I thought the debate on the previous question
9 indicated pretty clearly that the Commission felt that
10 this was the area where you simply couldn't define. I
11 think in substance your motion is the same unless you
12 are going to limit to a case where there was a complete
13 regional government in one area and I suggest to you
14 that might be awfully difficult.
15 MR. CLAGETT: Mr. Chairman, may I add to
16 what you have said there that what you are also doing,
17 I am afraid, is imposing a degree of restriction upon
18 action by the General Assembly and may be defining guide
19 lines which should not be defined at this stage and
20 should not be imposed upon the General Assembly when it
21 does meet and deal with this question. I feel we are

1 getting into the area of legislation to try to pinpoint
2 it at that point.
3 THE CHAIRMAN: I don't mean to suggest,
4 Mr. Sykes, that I would rule your motion out of order.
5 If you want to put it, I will put it.
6 MR. SYKES: From the general discussion
7 it appears to me that the Commission thought it was
8 included in the last motion. I don't think so but if
9 the sentiment would be the same, there is no point to
10 wasting time by taking it up formally.
11 MR. MITCHELL: Wasn't that the same point
12 covered by Mr. Martineau's suggestion?
13 THE CHAIRMAN: Most of us thought it was.
14 Mr. Sykes thought there is a distinction.
15 MR. CLAGETT:: Let me see if I understand it.
16 Your point is that if regional governments are created,
17 then there should be the restriction imposed that you
18 should not have the intergovernmental authorities.
19 MR. SYKES: Dealing with problems solely
20 within that region.
21 MR. CLAGETT: Based on the premise that

1 being the problem after the creation of the region.

2 MR. SYKES: That is right, and I thought

3 when the Chair stated what the general areas of agree-

4 ment where with everybody working on the problem, among

5 everybody working on the problem, that it was agreed

6 that the whole point of creating a regional government,

7 going that far was that all problems within the region

8 that would be delegated to an agency beyond the county

9 would be delegated to that regional government.

10 THE CHAIRMAN: I did, indeed.

11 MR. SYKES: And, of course, Mr. Martineau

12 pointed out that you might have problems transcending

13 regions and you want to leave the leeway there. But

14 if that is agreed to, then it seems to me that the

15 new suggestion that I made would be carry out the agree-

16 ment and without that suggestion being acted on by the

17 Commission, the result would be the exact opposite of

18 what the Chair said all the scholars had agreed upon.

19 THE CHAIRMAN: I didn't mean that all the

20 scholars had agreed upon but I am merely talking about

21 the people working here. I think the difference is this,

1 I think that all who are working on it agree with the
2 principle that proliferation was most undesirable and
3 that if you had one governmental agency or regional
4 government in a certain area that should suffice.
5 I don't or did not mean to suggest that all
6 felt that you should therefore compel that by the
7 Constitution, that this becomes the area where you have
8 to either tie strings and run the risk of tying too
9 many strings or leave it to the Legislature. The end
10 objective is agreed to by all, I think. Maybe the
11 simplest way is to put your motion to a vote and see
12 if the Commission agrees.
13 MR. SYKES: I will put it. I think it should
14 be voted on.
15 THE CHAIRMAN: Put your motion again, Mr.
16 Sykes.
17 MR. SYKES: I will move that Section 11.01
18 or any appropriate section be amended to provide that if
19 a regional government is enacted or activated for any
20 reason, then no intergovernmental authorites other
21 than that regional government could operate within that

1 region unless the intergovernmental authority was
2 dealing with a problem that extended beyond the
3 boundaries of the region.
4 THE CHAIRMAN: Is there a second?
5 DR. BARD: One of the things that concerns
6 me, Mr. Chairman, is that I think this kind of discussion
7 could take place better within the frame of reference --
8 THE CHAIRMAN: Excuse me a minute. I was
9 conscious of the fact that the record wouldn't show
10 anything on this last motion because I made no announce-
11 ment; if you would please have the record show that the
12 motion failed for lack of second.
13 DR. BARD: Some of this discussion which
14 has taken place, as I would see it, is premature and
15 this is one of the reasons why we are in this gray area
16 of understanding or at least I am within the gray area
17 of understanding. Will there be a time when we will
18 discuss the nature of how we shall set forth the regional
19 government in terms of the staff memo or let us say
20 the Committee report. Will that come somewhere along
21 the line?

1 THE CHAIRMAN: I think right about now is
2 the appropriate time for any who want to, to move this
3 question.
4 DR. BARD: That is why I feel that this
5 kind of discussion which Mr. Sykes is carrying out could
6 really have been a little more clearer had we made
7 that determination first and this is my difficulty in
8 even understanding the motives or the purposes.
9 MR. CLAGETT: I believe you ought to go
10 a little bit further with the report and then dissolve
11 that question because, I think, in fully appreciating
12 the recommendation of the Committee as against the
13 alternative, you have got to have appreciation of other
14 provisions.
15 DR. BARD: Okay.
16 MR. CLAGETT: Particularly the power being
17 granted to the power, the classification being allowable
18 insofar as the General Assembly is concerned --
19 THE CHAIRMAN: Since we have already been
20 over those and we can have the bird's eye view, don't
21 you think we could consider the question then?

1 MR. CLAGETT: I think it would take only a
2 very few minutes to run over those and we would have
3 them behind us rather than in front of us as we debate
4 the main issue.
5 THE CHAIRMAN: It would take much longer
6 than a few minutes. I thought the purpose of going
7 through the whole section yesterday was to give us the
8 broad view and then come back and take it up section by
9 section.
10 MR. CLAGETT: I agree with that but it has
11 been my experience that the more times I reviewed, the
12 more I began to appreciate what I was reviewing and I
13 think that is possibly true of other members of this
14 Committee.
15 THE CHAIRMAN: We will accept that time is
16 pressing on us. Does anyone want to move in any form
17 at all an alternate to the Committee draft as to the
18 creation of regional government? In other words, the
19 concept of the Committee draft is that the Legislature
20 is empowered to create regional governments. It doesn't
21 go beyond that. Now you had the other memoranda before

1 you. Does anyone wish to move any alternate?

2 MR. SYKES: I would like some information

3 from Mr. Brooks or from the Chairman as to the theory

4 of the difference. So far we have been unanimous along

5 the line in cutting out restrictions on the legislative

6 power.

7 THE CHAIRMAN: Let me answer you by saying

8 that we will give you both because our views are not

9 exactly the same. I can state my views on this particular

10 part of the problem very, very briefly. The difference

11 here is whether you are going to say to the Legislature

12 you have the authority to create a regional government.

13 Do so wherever it is necessary and saying

14 that the Legislature has the authority to create a

15 regional government where necessary, the counties have

16 the regional government where necessary and if neither

17 of them act, the people in that area can activate the

18 regional government. My own feeling is that the problem

19 is one that is going to require some push on the

20 Legislature to get it operating in certain areas. I

21 think the discussion here has indicated that the problem

1 is so very,very difficult that the Legislature is likely
2 to shy away from it, likely to shy away from the solu-
3 tion of it and it is bound to be an area where there
4 is going to be sharp divergencies of opinion. Take,
5 for instance, in my own area, the Baltimore Metropolitan
6 area, you have conflicting views of Baltimore County,
7 and Anne Arundel County, Baltimore City, and Howard
8 County, and perhaps even Harford County as to what should
9 be done and the pride of the people in not creating some
10 supergovernment, the jealousy about giving up any of
11 their powers.
12 I am very much afraid that if you just
13 leave the problem to the Legislature and say create
14 a regional government and define it, that it won't get
15 solved. I would prefer to see a situation where without
16 attempting to define the regional government today for
17 that area, we would provide the machinery whereby if the
18 Legislature didn't solve the problem, you could have the
19 mayor and City Council of Baltimore and the Baltimore
20 County Council and the other counties provide jointly
21 for the creation of a charter board for the Metropolitan

1 area of Baltimore and that board could sit down, come
2 up with a form of government that the people could vote
3 on and therefore, I think it is just a question of
4 providing the skeleton that would be a push to the
5 Legislature. John Brooks' views are not exactly those
6 of mine and he can state them better than I can.
7 MR. BROOKS: Two or three items, I think I
8 agree with most of what the Chairman has said -- two
9 or three additional comments.
10 First the B sentence now leaving aside the
11 amendment, the General Assembly may provide for law --
12 packs a great deal. I would suggest that it is not
13 sufficient to say civil divisions including regional
14 governments in that to say that the General Assembly
15 may create regional governments without saying more,
16 just outlines some hope but really doesn't provide the
17 tools for it.
18 We generally regard any form of government to be
19 such a significant part of the constitutional structure
20 of the over-all government that the specifics ought to
21 in some degree be outlined.

1 For instance, how do these regional govern-
2 ments acquire their powers? In answer to this, in
3 regard to counties and municipalities, we have additional
4 sections in our local government article dealing with
5 this particular question. On the other hand, to say
6 no more here will mean that local regional governments
7 probably won't be able to come into existence. In
8 addition, there is a real problem, probably in regard to
9 the existing authorities. The proof elsewhere seems to
10 be that where there is a multiplicity of authorities,
11 these authorities consider their interests to be of
12 such a special character that they themselves are interests
13 group resisting any kind of regional government.
14 It is in the very areas of the state, for
15 instance, where the authorities and the multiplicity
16 of authorities exist that the need for the regional
17 government exists. It is not Western Maryland or the
18 Eastern Shore that is in need of the regional government,
19 plus it is not these areas that have the authorities.
20 Rather it is the Baltimore-Washington area and I didn't
21 realize until Dr. Burdette mentioned there were over 150

1 districts and authorities and special taxing agencies
2 and revenue collecting agencies over in Prince Georges.
3 We have counted.
4 DR. BURDETTE: It is 115.
5 MR. BROOKS: We knew of some 53 from my own
6 survey that existed in this area already. Now these
7 groups are special interest groups in that they are
8 set up to resist anything that would destroy their own
9 authority. This works against the creation of any kind
10 of regional government. So if regional government is a
11 solution for the multiplicity of these authorities, it
12 requires additional push as the Chairman said. It
13 requires really some structure to promote it. So the
14 idea of the staff memo was to give an outline that would
15 challenge the efforts, that would channel, excuse me,
16 the efforts that are now being directed through authorities
17 in a unified coordinated fashion under a single authority
18 that would be representative in nature.
19 On the other hand, the design of this
20 proposal is not to establish regional governments in the
21 Constitution,as the Chairman mentioned, but rather to

1 create specific regions and to number how many of
2 these regions there can be because if you leave the
3 creation of regional governments to the initiation of
4 the counties themselves, it may well be that you will
5 get any number of combinations but you might get 12
6 different regional governments established in the state
7 and seemingly you would be in the situation of really
8 needing the interregional governmental authorities that
9 were discussed a while ago because the regional govern-
10 ments are set up too narrowly."
11 So by creating a skeleton that has no meat on it in
12 which you would outline what are the minimum boundaries
13 in allowing the flexibility for these boundaries to
14 be altered by the General Assembly but at least creating
15 the minimum boundaries originally to be considered in
16 the establishment of a regional government, you would
17 assure that there will not be a dozen small regional
18 governments but rather would lend an opportunity to have
19 what would be a significant regional government whenever
20 one is created. The people could initiate such a
21 regional government either personally, through petitions,

1 or through the governments which are county governments
2 that are the component governments of what would be a
3 region and the people would know in advance who has
4 to sign such a petition.
5 If you just start out, even if you
6 permitted the formation of a regional government by
7 petition without outlining what the region is, no one
8 would know who would have to sign a petition. No county
9 would be included. You could select the number of
10 counties you desire and get the petitions there. The
11 same would apply to the county governments. If they
12 were to initiate any kind of regional structure, they
13 would have to have some idea of what counties they would
14 have to negotiate with to form such a region rather than
15 just forming it with the party that has the most common
16 interest initially in the adjoining county.
17 In the case of Baltimore City, it would be
18 Baltimore County. In the meantime Anne Arundel may
19 decide to form a regional government with Howard before
20 Baltimore City and Baltimore County has had a chance
21 to discuss with Anne Arundel County the formation of a

1 regional government. So you really don't have any
2 control over the development.
3 THE CHAIRMAN: Mr. Sykes.
4 MR. SYKES: I find this helpful and I am
5 hopeful of isolating the policy issues on this
6 question in the same way the Chairman did on the
7 general questions. I take it from the discussion that
8 one fundamental difference between the two drafts or
9 two suggestions is whether a scheme for regional govern-
10 ment, at least in bare outline, should be put into the
11 Constitution.
12 Another seems to raise the question of
13 whether or not localities acting together should be
14 able to activate regional governments presumably with
15 or without the consent of the Legislature. That is
16 still another question that would be raised.
17 THE CHAIRMAN: That's right.
18 MR. SYKES: And a third question is if
19 you do put regional governments into the Constitution,
20 should it be done by the Constitution itself or should
21 it be done by schedule or some way that doesn't freeze

1 our present conceptions of regions into the Constitution.
2 Now are there any other questions that, policy
3 questions that are raised between the two approaches?
4 THE CHAIRMAN: No, I don't think there
5 are any others. I think some of these questions
6 telescope into one another. I don't think there are
7 as many as you indicate. As a last one, I think there
8 is no disagreement that the determination of what the
9 region should be is a legislative function.
10 I don't think anyone has suggested that
11 the various local governments can determine the regions.
12 I think this is all agreed, this is a legislative function.
13 There is a difference as to whether they can be called
14 into being only by the Legislature or called into being
15 by the local governments concerned, or the people concerned.
16 MR. SYKES: I have one other question and
17 I am through. In the Committee draft, the language is
18 that the General Assembly can provide for counties and
19 other civil divisions including regional governments and
20 intergovernmental authorities. I am afraid that that
21 language may lead to the assumption that a regional

1 government must be just that, a regional government, a
2 full regional government and that in any event I take
3 it it is agreed by everyone that a regional government
4 may be a partial government.
5 THE CHAIRMAN: Well, this becomes a matter
6 of nomenclature. I think the Chairman, Mr Clagett,
7 wanted to use the word civil division to encompass the
8 idea of an authority or a regional authority having a
9 single function or multiple function but less than a
10 complete function.
11 MR. BROOKS: There is a difference though
12 in B in regard to civil divisions insofar as it is
13 dealing with regional governments and insofar as it is
14 dealing with intergovernmental authorities, both of which
15 are lumped together in one little parenthetical state-
16 ment, in that the nature of government is such that only
17 the General Assembly can create the regional government
18 without saying more in the Constitution.
19 Govemment stems from the state which has
20 all the authority. Whereas the second part of that
21 clause, intergovernmental authorites, has no such

1 restriction that only the General Assembly could
2 create them without even saying that local government
3 can create them, the nature of authorities are such that
4 under the 5th section on intergovernmental authority,
5 and then the governmental relations that the subdivisions
6 under 11.05 would be able to create intergovernment
7 authorities.
8 MR. SYKES: There was one more difference
9 between the two drafts, was there not, and that is
10 whether intergovernmental authorities should be allowed
11 at all. I didn't find any provision for anything but
12 regions in the staff memo, is that right?
13 MR. BROOKS: That's right.
14 MR. CLAGETT: And a prohibition against
15 intergovernmental authorities in the staff memo.
16 MR. BROOKS: We found all the materials we
17 could find and all the consultants, we discussed this
18 particular series of problems with thought that the
19 experiences of the intergovernmental authorities were
20 altogether unfavorable.
21 JUDGE ADKINS: I would like to make what may

1 be an unorthodox proposal, but in this very complex
2 field, I think a great deal of time will be lost if we
3 try to propose from the floor, the Chair and the staff
4 and the Committee have undoubtedly given great considera-
5 tion to this problem. I think they see it in broader
6 perspective than any of the rest of us.
7 I would suggest that the Chair put as pre-
8 liminary policy questions the three or four major
9 issues here with the idea that we would then discuss
10 and debate, debate and vote on each of those issues but
11 without leaving it to the floor to put those motions.
12 It seems to me if the Chair puts the motions having
13 pretty clear concept of what is involved, we might make
14 progress a good deal faster than waiting for motions from
15 the floor.
16 I propose that as a procedure.
17 MR. SCANLAN: I second the motion.
18 MR. CIAGETT: That is a dangerous procedure
19 because you begin to get yourself committed toward an
20 eventual decision on the basis of a preliminary choice
21 and you may place yourself in an embarrassing position

1 where you really don't want to be voting on the whole
2 question.
3 MR. MARTINEAU: We have never been embarrassed
4 by that.
5 MR. CLAGETT: Let me suggest this which
6 hasn't been mentioned heretofore. One difference
7 between the proposed draft that Mr. Eney has told us
8 y4sterday to identify with his initials up there at the
9 top and the staff memorandum is that the staff memorandum
10 in its Section 11.02 clearly provides for regional
11 representative governments to be established. Now
12 that is a particular form of regional government which
13 is not included in Mr. Eney's draft where he leaves it
14 open to the, leaves the choice open of what kind of
15 regional government shall be created to a later date.
16 Now I think that you can best appreciate the position
17 of the Committee when you take a good look at what is
18 in front of you and ask yourself what isn't and it is
19 that the Committee has determined upon the approach recom-
20 mended in its draft with an alternative approach to be provided
21

1 either in the form of a staff memo or in the form of
2 the proposed draft by Mr. Eney.
3 JUDGE ADKINS: The difficulty I have with
4 Mr. Clagett's proposal is the fact that each of these
5 drafts has within them certain policy questions with
6 which I at least can favor. There is no single draft
7 that meets all the policy questions that I would like
8 to see embodied in the draft.
9 It seems to me the only way we can get at
10 this is to approach it as we have done in other areas
11 to find the feeling of the Commission on individual
12 policy questions without relationship to the draft.
13 THE CHAIRMAN: I think we can do this
14 without running into the morass that Mr. Clagett fears.
15 Because the remaining policy questions, while they are
16 not perhaps clearly defined in the language in the
17 separate drafts, I think a study of them points up the
18 problems and they could be rather simply stated. I
19 think the one policy question is whether or not regional
20 governments shall be permissive, that is shall be
21 authorized to be created by the Legislature, whether

1 the Constitution shall be limited merely to an authoriza-
2 tion to the Legislature to create regional governments.
3 Secondly, whether instead of that the Constitution
4 should provide a skeleton for a regional government to
5 be called into existence.
6 The second question -- when needed -- the
7 second question, it seems to me, is whether the
8 Legislature may call into existence a regional government
9 or whether it may be called into existence by the govern-
10 ments of the parties participating units or popular
11 election or the Legislature or any one of the three.
12 The third issue and a very important one is
13 whether or not regional governments shall be required
14 by the Constitution to be representative government.
15 By that I mean governments in which the legislative
16 powers are exercised by representatives directly elected
17 by the people. I think these are the three principal
18 policy questions that are inherent in this section.
19 MRS. FREEDLANDER: Isn't there another one,
20 Mr.Eney, about whether or not any other authority?
21 THE CHAIRMAN: Yes, whether any other

1 authority should be permitted in the governmental
2 authority to be permitted. Aren't they about the four
3 problems?
4 MR. CLAGETT: I would say those are the
5 four.
6 THE CHAIRMAN: Why couldn't we put up those
7 four and I think if there was a decision on those four,
8 your drafting problems would be greatly minimized.
9 MR. CLAGETT: Yes, sir, I would like to know
10 the order in which we are going to put them.
11 THE CHAIRMAN: I don't care. I think
12 logically you have to put the question -- well, I don't
13 care.
14 JUDGE ADKINS: I will make a motion, if the
15 Chairman will entertain it, that we decide the policy
16 question relative to representation in favor of having
17 regional governments representative.
18 THE CHAIRMAN: All right. Now let me, is
19 that seconded?
20 MR. SYKES: Second it.
21 THE CHAIRMAN: Let me point out to you

1 before you debate that you've got to keep in mind in
2 consideration of this provision the provision that has
3 no article in the section yet, the first section
4 recommended by the Committee on Taxation yesterday which
5 says that no tax shall be imposed by any unit of
6 government, state or local, except by elected represen-
7 tatives of the people so that if you did not provide
8 that the regional government had to be represented and
9 the legislature created one which was not representative,
10 then under the other provision, it could not exercise
11 the taxing power.
12 JUDGE ADKINS: The proposition is self-evident
13 and doesn't require much debate.
14 MR. MARTINEAU: I can't say that I agree
15 with that. It all depends on how you view this regional
16 government. If a regional government is a complete
17 government, I can see the point. If the regional govern-
18 ment is a great deal less than a complete one, that is
19 one exercising only one or two powers similar to that
20 exercised by authority such as sewage and transportation,
21 I see no reason for it to be an elected representative

1 government.

2 MR. CLAGETT: This would clearly indicate

3 a full and complete government.

4 MR. MARTINEAU: If that is what we are

5 talking about --

6 MR. HOFF: I would think that any regional

7 government regardless of the powers, if it has the

8 power to impose a tax ought to be representative and

9 without having a regional government with limitations but

10 with the power to impose the tax on all the people

11 within that area for whatever purpose it may have been

12 formed should be, the tax should be levied by the

13 people who are elected.

14 I can't see the delegation of power;even a

15 limited power would be proper.

16 MRS. BOTHE: I was going to say what Bob

17 just said, I think we decided this question yesterday.

18 It is unnecessary to go in it today because implicit in

19 the decision yesterday was the necessity to elect those

20 who will oppose the taxes who are, after all, the funda-

21 mental power of government.

1 I think everything else would fall into
2 line.
3 MR. SCANLAN: I think the 14th amendment
4 and the equal protection clause might come into play
5 here, If it is truly a government, then it must be
6 representative in the constitutional sense and I think
7 any governmental agency exercising the power of taxation
8 would be classified by the court as a government in the
9 true sense to which the 14th amendment would be applicable
10 in requiring one man and one vote.
11 MR. BROOKS: Original government without
12 saying it is to be representative is not inherently
13 required to be representative. The regional governments
14 being discussed in Detroit, the one that has been
15 established in Toronto are not in fact representative
16 governments and are called regional governments. They
17 are not even based on a proportional representation but
18 they are made up by having a delegate or two from the
19 various proponent governments sitting together on this
20 council which has legislative and executive responsibilities
21 It is not an inherent requirement they be

1 representative but I think a very important consideration
2 that they be representative in fact and that such a
3 requirement be specified.
4 DR. BURDETTE: I have seen the study by
5 the University of Illinois makes the point where the
6 chips are down, unless there is representation in
7 accordance with the principle of Mr. Scanlan is speaking
8 of, that, the various governments are simply going to be
9 outvoted. If we have regional governments with appointees
10 who have equal weight from small units against large
11 units, both in population and in financial strength,
12 the real fact is that the regional government will not
13 function.
14 MR. CLAGETT: I think it is important to
15 appreciate that what we are really voting on here is
16 whether or not the Constitution shall mandate represen-
17 tative regional government. I do point out that in the
18 Committee's draft, when you get to that issue and
19 determine it, the representative principle is not
20 excluded. What we are doing now, it seems to me, is
21 debating where the debate should properly be with the

1 General Assembly under the Committee's draft and
2 arrange of choice or selection.
3 THE CHAIRMAN: Let me make this observation
4 as to why the draft I had prepared does not expressly
5 provide for representative government. I would subscribe
6 wholeheartedly to the view expressed by Dr. Burdette
7 if we were consideration a regional government only as
8 a full government. I think anything less than a fully
9 directly elected representative government in that
10 situation would not be desirable.
11 This is an area where I fear too much
12 rigidity in the Constitution and if we think of a
13 possible regional government as one exercising only
14 one or two functions as for instance the transit function
15 or the sewer function, it seems to me that it might be
16 considered desirable for that to be managed by a group
17 selected by the governing bodies of the component
18 parts; for instance, again if you have a metropolitan
19 area of Baltimore dealing only with transit and sewers
20 which are one of the really, or two of the really
21 vital problems that you might have the governing board

1 or body, whatever it might be called, consisting of
2 representatives elected by the County Council of
3 Baltimore County and the County Council of Anne Arundel
4 County and the City Council of Baltimore and that would
5 not be an elected representative body.
6 On the other hand, if that body is to have
7 the power to tax, I think all of our traditions and the
8 things ingrained in us make us say that it must be a
9 direct representative government. But I think we have
10 that in the provision, yes, sir.
11 I do not feel strongly about it. I simply point
12 out this is again one of those areas where it is easy
13 to say it ought to be representative government if you
14 know exactly what you are talking about but when we
15 don't know what the future holds, this may be a problem.
16 MR. MILLER: Might it not be difficult to
17 get the right people to serve on some of these boards
18 where they are only part time, if they had to run for
19 an election, you would have a great deal of trouble in
20 some areas whereas if the County Commissioners or county
21 governing body would appoint them, they would still be

1 represented by the elected people.

2 JUDGE ADKINS: I have difficulty in my

3 thinking here, in view of the Chair's comment, in

4 distinguishing between a regional government for a

5 single or dual or triple purpose and the authority

6 system which we are now operating under. It seems to

7 me that if regional government concept has any merit,

8 is to get away from the authority concept and give the

9 regional government the authority to impose not only

10 to legislate but to collect and spend funds. Where is

11 this distinction between your concept and the original

12 government concept.

13 THE CHAIRMAN: I have to answer in one

14 word, shadow. The difficulty is that I cannot bring

15 to my mind a concept of anything that would serve the

16 Baltimore and Washington area short of a complete

17 government and yet I am quite confident that a man's

18 ingenuity is such that there can be something that I

19 can't think of that could be created. I don't think

20 this necessarily means this is a choice between a

21 complete regional government which in effect would make

1 the county, as Hal put it, die on the vine and the
2 authority such as we have today. Because the difficulty
3 is that the authority doesn't have the power to act.
4 It is an advisory thing. And maybe the authority could
5 be given enough teeth by the Legislature to be really a,
6 have enough power and if so, then it goes over the
7 shadows into this area of the government. It is not
8 in my mind a clear-cut distinction.
9 JUDGE ADKINS: You don't draw any distinction
10 between the power to tax and the power to implement
11 decision?
12 THE CHAIRMAN: Oh, I do draw a distinction.
13 Put the word effective in quotes. You could not certainly
14 have a fully effective regional government without the
15 power to tax.
16 JUDGE ADKINS: Do we want a fully effective
17 one?
18 THE CHAIRMAN: I personally do.
19 JUDGE ADKINS: Then you have to have elected
20 representatives, don't you?
21 THE CHAIRMAN: I think that is true. My

1 hesitation is in saying that I can't think of something
2 in between;somebody else can.
3 DR. WINSLOW: Isn't it true that the New
4 York Port Authority is not only regional, it is intra-
5 state, interstate, and that it does not have power to
6 tax but that it is effective entirely?
7 THE CHAIRMAN: Again you would have to put
8 the effective in quotes. There are a lot of people
9 who say effective to a certain extent but not as
10 effective as it might be.
11 MR. MARTINEAU: Going on, commenting on the
12 effectiveness aspect, this problem has been cured by
13 the provisions which don't give the authority the power
14 to tax but which require the local county to impose a
15 tax to raise the money specified in the budget of the
16 authority such as with the Sanitary District and the
17 County Commissioners have to impose a tax in the
18 amount designated by the authorities. I don't see the
19 power to tax is necessarily or is necessary to an
20 effective authority.
21 MRS. BOTHE: I think we are off the track.

1 The issue is whether the representative government has
2 to be mandated in the Constitution, not whether it
3 should be or shouldn't be and to have an effective
4 regional government, of course, you will have to have
5 representative government because you have to have the
6 power to tax. We have already determined that only
7 elected representatives can levy it but why can't we
8 leave that to the practicalities that face the Legislature
9 when it sets up regional government rather than demand
10 it in the Constitution which might cause all kinds of
11 unintended results.
12 MR. BROOKS: First to answer Judge Adkins
13 question, the problem of the primary distinction between
14 regional governments and authorities is the taxing power
15 power. Although both of them overlap in the area of
16 revenue collecting authority, I think the real question
17 is what foot are these to get off on in that and though
18 a government, meaning it will have executive and
19 legislative powers, can be very small. It can be composed
20 of four, six, or eight or one hundred representatives.
21 The fact is if we want it to have only two powers, say

1 rapid transit and water and sewage, if initially it is
2 created as an authority for that purpose and it is
3 put together by having representatives of component
4 governments when we add the next authority or power to
5 that authority or power to that authority, wanting a
6 multi-purpose authority, more than likely that authority
7 will be added without changing the structure of this
8 multi-purpose authority and thus the authority will
9 grow into multi-purpose authority with perhaps 50 or
10 60 different powers and still it will be an authority
11 put together the same way. So the real question is
12 how will it initially be organized. It is that way,
13 it is likely to continue to exist and if it is to have
14 such powers as the authority can have and border on
15 having similar powers to regional governments, do we
16 in fact think these powers should be vested in people
17 who are directly responsive to the people or should it
18 be a secondhand government?
19 THE CHAIRMAN: The question arises on the
20 motion to resolve the policy question as to whether
21 regional governments should be representative governments

1 in favor of that proposition. So a vote aye is a vote
2 in favor of the constitutional requirement that regional
3 governments shall be representative governments.
4 DR. JENKINS: Does this mean regional
5 government with the power to tax?
6 THE CHAIRMAN: Would have the power to
7 action or not have the power to action.
8 THE CHAIRMAN: The vote aye is a vote in
9 favor of the constitutional requirement for representative
10 government in a regional government. A vote aye is
11 a vote in favor of representative government for a
12 regional government. All those in favor, please signify
13 by a show of hands. Those opposed, raise your hands.
14 The motion is carried twelve to seven.
15 Let's take a short coffee break.
16 (Short recess.)
17 THE CHAIRMAN: May we come to order, please.
18 I think probably the next question to be put up,
19 policy question is whether the Constitution should
20 merely authorize the Legislature to create regional
21 governments or should go further and provide a skeleton

1 framework of regional government which could be
2 called into being later.
3 MR. SYKES: May I ask a question on that.
4 I would like to ask the Committee if a framework is
5 put into the Constitution or into the schedule and it
6 is made perfectly clear that the Legislature has the
7 final say in that it either may or may not activate
8 the government provided for in the framework and it may
9 change the framework to any extent it wants, what is
10 the objection, if any, to not providing it in the
11 Constitution?
12 THE CHAIRMAN: Mr.Clagett.
13 MR. CLAGETT: You are then attempting to
14 define and place the Legislature in a position whereby
15 the Constitutional structure,which you have called a
16 skeleton, it would be restricted and confined to.
17 I don't think you can draft something that is so loose
18 that you can say here it is, but you can change it at
19 will. I think if you provide the skeleton, you are
20 attempting to define and restrict the General Assembly.
21 MR. SCANLAN: I want to address a question

1 to Mr. Clagett. I correct in reading both the staff
2 report and Mr. Eney's proposal as providing skeleton,
3 one is the skeleton that frightens me and one doesn't
4 bother me at all. Are they both skeletons?
5 MR.CLAGETT: Yes.
6 MR. SCANLAN: In voting on this, I'm not
7 choosing between the skeletons.
8 MR. CLAGETT: You have the skeleton as
9 opposed to no skeleton, and leaving it to the General
10 Assembly if the problem does arise.
11 THE CHAIRMAN: Mrs. Bothe.
12 MRS. BOTHE: I was wondering if the Committee
13 considered in its nonskeletal proposal at least restrict-
14 ing the number of regional governments that might be
15 permitted.
16 MR. CLAGETT: Yes, and actually we have done
17 that insofar as classification is concerned as well as
18 in discussion. Classification is limited to no more
19 than five, three counties within five. That ties in
20 with the limitation that we would feel would be applicable
21 to regional skeletons, no more than five.

1 MRS. BOTHE: As I understand it, those
2 limitations apply to classifications by the Legislature
3 for the purpose of legislation but not for a restriction
4 on divisions of regional government.
5 MR. CLAGETT: True.
6 MRS. BOTHE: I was concerned about the
7 remarks John made that if we ended up with 12 or 15
8 regional governments, we would really be back where we
9 started and I would wonder whether a compromise of sorts
10 couldn't at least be reached by precluding the existence
11 of more than a certain number of regional governments,
12 though not setting out which.
13 MR. CLAGETT: You mean which counties will
14 be in which government? Yes, I think the Committee is
15 of the thinking that five would be the proper limitation
16 and the two proposals leave a degree of choice with
17 respect to the determination of a boundary line and which
18 counties shall be included in any one of the regional
19 governments. I don't think the skeletons so called,
20 include the bones or all of the bones.
21 THE CHAIRMAN: Mrs. Freedlander.

1 MRS. FREEDLANDER: Mr. Chairman, during all
2 of our deliberations, we had the good fortune to have
3 present, I don't know if you can call them obvious, but
4 that is what they were, from the National Municipal
5 League and whatever the counterpart is for the
6 county organization and on many occasions they cautioned
7 us against allowing such a provision to be included
8 without a skeleton. Legislatures, no matter whether
9 they are the old or new variety would not vote in any-
10 thing else unless they had some kind of skeleton or
11 provisions for the people doing it or petition and so on.
12 That was another reason why we are leaving in the
13 direction of a skeleton of some kind.
14 MR. CLAGETT: I believe the time has come
15 for me to state my position and the Commission, and the
16 position of a majority of the Committee. Basically
17 the reason why we have come up with the recommendation
18 which we have here before you because I think you have
19 got to have the thinking of the Committee or an aye would
20 say the majority of the Committee because there has been
21 a good deal of difference of thought and I don't want to

1 restrict any individual member of the Committee in
2 expressing his or her position contrary to that of the
3 majority, but it is the thinking of the Committee that
4 where you take the four corners of our proposal and you
5 carefully appreciate it, what we have done here is we
6 have attempted to vitalize the county government, the
7 local government and the basic unit of the local
8 government is the county and yet, at the moment, we
9 have tried to give to the General Assembly a degree of
10 flexibility so that it can take care of matters which
11 are truly general public policy throughout the state.
12 Now, if you are going to activate the
13 counties and you are going to give them the broad grant
14 of power which we have given here and if you are going
15 to give the General Assembly the power of classification
16 which gives it a degree of flexibility to deal with
17 regional matters, or matters which transcend county
18 lines, thus giving them a degree of flexibility from
19 merely passing general laws which must affect all counties
20 in terms and affect and say that they can pass general
21 laws which shall apply to all of the counties within a

1 classification, which may be only three counties --
2 I feel that we have given there, a degree of, we have
3 given a tool to the General Assembly to deal with the
4 pocket of urban development which has created such a
5 problem by reason of the population explosion, particularly
6 insofar as that pocket may be around the Washington
7 area, Montgomery, Prince Georges, and Howard and where
8 there may be a similar pocket around Baltimore in the
9 city, the Baltimore County and Howard. Now if we are
10 going to approach the problem by this method, namely the
11 broad grant of powers to the counties and the degree of
12 flexibility insofar as the General Assembly is concerned
13 but divorcing it from local matters and putting it
14 up on the level of general public policy, then to come
15 along and create in between those two governments, a
16 regional government, I think is doing what? It is doing
17 just the opposite of what the Committee has attempted
18 to do here.
19 As you create the skeleton and as you create
20 a regional government as such, giving it representative
21 composition, power to tax and so forth, you are going to,

1 and each of the proponents of that idea have said you
2 will draw from the counties and you will draw from the
3 General Assembly, so you are going to be drawing away
4 powers that you are giving to the local subdivisions
5 and giving to the General Assembly. You are creating
6 a separate intermediate form of government.
7 Now notwithstanding the fact that there is
8 a pocket where some such solution might be advisable
9 or might be a good one, nevertheless insofar as the
10 state as a whole is concerned, that is not true. You
11 don't have the necessity for an intermediate form of
12 government with all the ramifications that go with it.
13 I don't mean to do other than to point out certain
14 problems.
15 We have just gone through a primary election
16 where the voting machine wasn't capable of carrying all
17 the names that you go in and vote for. If you create
18 an intermediate government, you are introducing into the
19 picture a greater degree of confusion.
20 You are introducing into the picture the
21 necessity and the responsibility upon the electorate of

1 making the choice of representatives to make up that
2 intermediate government. You are creating the very
3 problem we have attempted to eliminate insofar as the
4 counties and cities are concerned.
5 Now if we carry this thing to its logical
6 extent, we are also saying that there will be no inter-
7 governmental authorities. We have provided in the
8 recommendation for regional governments if regional
9 governments should be determined to be in the future the
10 appropriate form of government but at the moment we have
11 provided for intergovernmental authority.
12 The intergovernmental authority device is one
13 which could logically grow in the direction of a
14 regional if and when the ultimate extension became
15 the appropriate one. But in the meantime, as we deal
16 with the immediate problems, the intermediate government
17 authority method either are created by the General
18 Assembly or agreement or compact entered into between
19 the counties or the civil divisions as we define them
20 can adequately deal with the problems. It has been
21 said that if we don't give the guide lines, we don't give

1 the skeleton, it will never be adopted.

2 Well, isn't that in a sense saying that there

3 isn't such a need for the skeleton. If it is not going

4 to come into existence, it means that the need is not

5 there to bring it into existence because if the need is

6 there to solve the problem with the General Assembly

7 having the general policy-making responsibility, the

8 local governments having the power to act in the ways

9 in which they can act, it will be brought into focus and

10 it will be exercised.

11 But if it is not going to be exercised

12 merely because of the fact there is no need, then we

13 should not require and impose that upon the Constitution

14 at this time. And so, as we approach these various

15 policy questions, I think you have got to reconcile

16 or you've got to really decide whether or not we at this

17 time are going to be a General Assembly or whether we

18 are going to write a Constitution giving the responsibility

19 to the General Assembly when and if that time comes.

20 Where our Legislative Committee has pleaded for confidence

21 in the General Assembly similarly I plead for the same

1 degree of confidence in that General Assembly to take
2 care of this problem. There is nothing in the recommen-
3 dation of the Committee which would prevent the General
4 Assembly from creating a regional government which shall
5 be representative in its composition or shall be
6 something else in its composition.
7 We don't know -- when that day comes is
8 one that is so far away we don't know whether it will
9 ever be necessary because we don't know the full extent
10 and use of the other media that are immediately
11 available to us insofar as the intergovernmental relation-
12 ships or authorities are concerned.
13 So it is that I view the trend that is
14 evident so far insofar as our decision upon these policy
15 questions as putting the Commission on record as favoring
16 a structure of government which well may not be the
17 proper structure at the time when the real need and not
18 just the feared need would be there.
19 One other point. In sofar as intergovernmental
20 authorities are concerned, there are only at this time
21 a total of 126 in the ~~intern~~ entire state and of that 126 only

1 28 are ones which are dealing with and truly with inter-
2 governmental problems transcending local boundaries,
3 such as the Washington Suburban Sanitary Commission is
4 the National Capital Park and Planning Commission and
5 the Baltimore Port Authority and so forth.
6 The rest of them are nothing more than mere
7 soil conservation areas or drainage areas or something
8 of that kind. The 115 that are referred to in Prince
9 Georges County are not truly authorities as such. They
10 are merely special purpose districts and there is nothing
11 to stop the County Commissioners from dissolving them
12 if and when they saw fit to do so.
13 Similarly, there would be nothing that would
14 prevent the General Assembly from defining and imposing
15 the restrictions insofar as the extent and service of the
16 authorities which it may create is concerned. So I
17 say once again in conclusion, let's leave to the General
18 Assembly the degree of responsibility and the flexibility
19 with which to meet that responsibility as these problems
20 arise and as they can best be dealt with by all of the
21 power of inquiry and debate of the General Assembly

1 rather than our undertaking to do it here at this time.
2 THE CHAIRMAN: Mr. Sykes.
3 MR. SYKES: Mr. Chairman, I would like to
4 ask a question for clarification. I would like to know
5 whether there is anything in the staff memo or in the
6 proposal marked with your name which restricts in any
7 way the plenary power of the Legislature to decide what
8 regions should be created, whether any region should
9 be created and if so, what powers should be given to
10 those regional governments except possibly the question
11 of -- except the possibility that regional governments
12 may be activated by action of counties without the
13 consent of the Legislature which I understand is a
14 special subject which will be discussed by itself. Is
15 there anything else?
16 THE CHAIRMAN: The answer to your three
17 questions are yes, no, yes. In other words, there isn't
18 anything in either which prevents the Legislature from
19 creating any regions they desire or changing them. Your
20 second question is or is there anything to prevent the
21 Legislature not creating the regions and the answer is

1 yes, that is forbidden. The drafts here provide in
2 effect that there must be regions. Now the Legislature
3 can define them or change them but there must be regions.
4 Now the third question you asked was there anything in
5 the drafts that took away the power of the Legislature
6 to give the powers to the local regions or to limit the
7 powers to the local regions and I said the answer to
8 that was yes, there is nothing in here to limit. Perhaps
9 that shouldn't be an unqualified yes. The power of the
10 local Legislature to limit would be the same as -- I
11 mean the power of the Legislature to limit the regional
12 government's exercise of power would be the same as its
13 power to limit the county.
14 In other words, it could do so only by
15 general law applicable to generally, to the regions.
16 It could not take away the power of the individual
17 counties or the people or however you work it to create
18 a charter defining the powers of the region. In other
19 words, the concept here is that the powers flow from
20 the counties to the regions. The Legislature has just
21 the same measure of control over that as it has over

1 the powers of the counties.

2 Mr. Haile.

3 MR. HAILE: I would like to suggest on this

4 motion we are discussing that the regions be placed in

5 the Constitution contrary to what we do -- we don't

6 put county lines in the Constitution, but place the

7 regional boundaries in the Constitution and at the

8 moment provide that they may be altered by the Legisla-

9 ture without a referendum. That would be a useful

10 device.

11 THE CHAIRMAN: Well, that in effect is what

12 is in my draft.

13 MR. HAILE: That is what I am moving.

14 THE CHAIRMAN: But rather than have that

15 perhaps woven in with this question, I made a note here

16 that that really ought to be submitted as a separate

17 question.

18 MR. HAILE: Very well.

19 JUDGE ADKINS: Is there a question before

20 the Chair?

21 THE CHAIRMAN: The policy question is whether

1 the provision to be included in the Constitution shall
2 be permissive merely, that is authorizing the Legislature
3 to create but nothing more or whether it should in
4 addition provide skeleton for such regions as the skeleton
5 term has been defined.
6 JUDGE ADKINS: Is there a motion on that?
7 THE CHAIRMAN: Simply in accord with your
8 suggestion. Mr. Martineau.
9 MR. MARTINEAU: Doesn't this motion also go
10 to the manner in which these regional governments are
11 formed?
12 THE CHAIRMAN: No, that is a separate
13 question to come up separately.
14 MR. MARTINEAU: I would like to speak
15 in favor of the Committee's viewpoint and going along
16 with what Hal Clagett said. It seems to me that at this
17 point to try to specify what these regions, how many
18 regions there are, how they are to be created or anything
19 else would be a great mistake. I don't -- once again
20 I think we are in a situation where we have no idea
21 what the future holds and to say that there shall be

1 five regions or fewer makes no sense at all to me. It
2 doesn't guarantee if the regions are going to be
3 reasonable regions. You could have four regions divided
4 in a small area and the rest of the state would then
5 have to be --
6 THE CHAIRMAN: May I interrupt. Again
7 because I thought from the earlier discussion that this
8 is going to be really a separate discussion. I had
9 noted it as a separate question how many regions because
10 it seems to me that you may favor the idea of having
11 a skeleton but there may be differences as to whether
12 it should be five.
13 MR. MARTINEAU: Without specifying any
14 number; that it doesn't do any good to specify any
15 number whether it is three, four, five, or ten. You
16 don't gain anything by this because your regions can
17 wind up being completely unreasonable. It doesn't
18 prevent the proliferation of a small number of regions
19 in one metropolitan area and let the rest of the state
20 have only one or two regions. For that reason I think
21 the Committee draft is exactly the way we should adopt

1 this, that we don't know what the future holds and
2 to try to specify is a great mistake.
3 THE CHAIRMAN: Dr. Bard.
4 DR. BARD: I think that fundamentally the
5 problems of government have transcended the boundary
6 lines of corporate limits as we know them to such a
7 degree that not to make skeletal structural procedure
8 for regional governments as I would see it, nor the
9 demand of our times and the early history of our
10 country, the same kind of arguments were stated in setting
11 forth the boundaries of our states as far as the
12 western territories were concerned. But we did have
13 provisions in regard to changing those boundary lines
14 and because we did set forth the concept of federalism
15 within the constitution, we were able to move ahead.
16 What we are doing here is to set forth a concept with
17 some strength. I think to set it forth in a fairly
18 reasonable fashion would be to indicate we have no faith,
19 that we are moving in this direction and in terms of the
20 statement that the General Assembly should have the
21 requirements, they would still have under the proposed
draft the power to make the changes that are necessary.

1 The Congress had the power in regard to the
2 western territories. Nothing was frozen solidly. It
3 was just a viewpoint that was necessary in terms of
4 those times and I think in the same way, Mr. Chairman,
5 our viewpoint, as far as the 1960's are concerned, needs
6 to be so stated.
7 JUDGE ADKINS: Mr. Chairman, my thinking
8 has changed in the course of this discussion. I am
9 in favor of the Committee's viewpoint of not trying
10 to categorize or skeletonize the regional governments.
11 It seems to me that the arguments in favor of it are
12 arguments properly made before a Committee of the
13 Legislature or before the Legislature and not made at
14 this body. I do not think we should attempt to write
15 the wisdom of the movement into a formula for the future.
16 It seems to me that is what we are trying to do if
17 we now prescribe for alltime what the nature of the
18 regional government should be. I am conscious of the
19 fact that the Committee, the Commission wants to give
20 an impetus to this movement but it does not seem to me
21 this is the way to do it. I think I agree with Mr. Clagett

1 and Mr. Martineau when they say that however urgent
2 this problem may be a constitutional mandate is not the
3 way to solve it. It should be solved with the legislative
4 mandate operating within permissive constitution
5 limitations.
6 I support the Committee's view.
7 DR. JENKINS: The difficulty I find with the
8 so-called skeleton arrangement is that the whole thing
9 is so indefinite that we seem to say that we will set
10 up five or less or fewer definite regions or departments
11 but no two people on this Commission would agree on
12 exactly what these regions are to do or these regional
13 organizations or their form of government.
14 We leave that to the General Assembly. It
15 seems to me that we should authorize this by the
16 General Assembly and let the General Assembly set up
17 their whole procedure.
18 THE CHAIRMAN: Mr. Brooks.
19 MR. BROOKS: First I think, well, let me
20 clarify one difference between the staff memo and the
21 one Mr.Eney has prepared which sets forth specific

1 regions in the Constitution to become active if the
2 counties do not establish regions themselves or the
3 Legislature does not and that is the staff point of
4 view would be that the regions should be established
5 after a study of that particular subject by an altogether
6 different group to make a report to the Convention as
7 to what would be desirable regions. At this point in
8 history, to put it in the schedule subject to General
9 Assembly modification as the years advance and as the
10 needs for activiation of different regions arise, with
11 that distinction mentioned, I might say that the facts
12 that require some kind of consideration of regional
13 government is not a collection of facts dealing with
14 future problems and future conditions.
15 These facts are those existing today. To
16 say that 28 governments to have specific powers today
17 and that are active can be classified as only 28. The
18 fact that they are located in one region is really
19 quite an understatement of the situation existing in
20 that region where these 28 exist today. London had only
21 12 regions that were not getting along well at all together

1 and because of the inconsistencies of their performance
2 gave rise to the Greater London Metropolitan Government
3 which is now one year old.
4 So the problem is with us now and it is
5 28 times magnified, the problem that should occur and
6 should be under consideration and it is a tremendous
7 problem. Someone asked whether or not the classification
8 of counties is in any way a limitation of the regions.
9 Of course, regional governments can be
10 set up and be given grant of powers by the General
11 Assembly from the state's powers and therefore does not
12 require any kind of withdrawal necessarily, the powers
13 of local government. It was being suggested in the
14 staff memo that local governments should be able to
15 create such governments and should be able to grant
16 some of the powers that have been granted to them by
17 the General Assembly to such an established regional
18 government.
19 But there is no inherent limitation on the
20 number of these regional governments through the
21 classification of counties provision in that you do not

1 have to withdraw any powers from the counties in order
2 to establish a regional government.
3 So you have no check on how many of these
4 there will be. So you are presented with a problem of
5 perhaps a proliferation of regional governments. You
6 could have, you could easily have 12 or so in the state
7 which really won't resolve the problem. I think, too,
8 it ought to be noted that since we have heard from
9 four ,and only four of the members are with us today from
10 the Committee, three of them expressed a viewpoint in
11 favor of an establishment of some sort of skeleton
12 regional government.
13 THE CHAIRMAN: Any further discussion?
14 MR. SYKES: Mr. Chairman, I would like to
15 state my views.
16 THE CHAIRMAN: Before you close, oh, it
17 is not your motion. Go ahead.
18 MR. SYKES: I would like to state at least
19 what I think are now my views on the whole subject.
20 The questions are inter-related but I think that there
21 is no significant restriction on legislative power if a

1 skeleton such as I would envision it were put into the
2 Constitution and that the net effect of putting it in
3 would be psychological and suggestive.
4 That is these regional governments would
5 be dormant purely until the Legislature chose to
6 activate them. I think that the localities should have
7 a right to initiate their activation but only subject
8 to the veto of the Legislature, the same way localities
9 can contract for intergovernmental authorities. I
10 think that if the Legislature is given the power over
11 the activiation, then the Legislature retains all the
12 power and what we are talking about is essentially a
13 psychological question and the answer depends upon how
14 strongly you value a push toward regional government,
15 and I personally value it very highly.
16 THE CHAIRMAN: Let me make just two comments.
17 First, so that there will be no misunderstanding, I
18 think we ought to consider separately and as a separate
19 question the question of how many regions or if there
20 ought to be any limit on the number of regions because
21 even if one favors regions, I can see that there might

1 be some difference of opinion as to how many or whether
2 there should be any. So I would suggest that you express
3 your opinion on this question without regard to
4 any limitation at all or any specific limitation on
5 the number of regions.
6 Secondly, let me make this one other
7 observation. I think the term skeleton government is
8 an unfortunate one to use to describe the suggestion
9 here in the staff memo or opinion because it really
10 isn't that. It doesn't provide a skeleton form of
11 government. What it does do and what each of them do
12 and what is the only gap in my way of thinking in the
13 Committee's memo is that it provides a machinery by
14 which the local governments involved or the people of
15 the area can call into being a regional government if
16 the Legislature has not acted to do so. To put it
17 another way, it provides a machinery by which the local
18 governments involved or the people involved can call
19 into being against the will of the Legislature a regional
20 government.
21 I think, therefore, that that really is the

1 issue that you are voting on here. The Committee's
2 recommendation is that the legislative power be para-
3 mount in this matter and that there be no regional govern-
4 ment unless the Legislature gives its acquiescence.
5 The other is that any one of three agencies
6 may call into being a regional government, the
7 Legislature, the government of the local unit involved
8 or the people of the local units involved. A vote aye
9 will be a vote in favor of the Committee approach,
10 that is permissive only. That is that the Legislature
11 and only the Legislature shall have the power to call
12 into being the regional government or to provide
13 machinery by which such a government may be called into
14 being. A vote no will be a vote in favor of the
15 proposition that independently of the Legislature,
16 against the will of the Legislature, the local units
17 or the people or some combination would be able to call
18 such a structure into being.
19 MR. MARTINEAU: Perhaps I misunderstood but
20 I thought you told me when I asked a question that that
21 is exactly what we weren't voting on.

1 THE CHAIRMAN: All right, I am afraid I
2 have confused it. I did not mean to suggest that the
3 vote now is going to be a vote necessarily on whether
4 the local government or the people or a combination of
5 the two is voting. That we can put up as a separate
6 question. The question here involved is whether the
7 regional government can be called into being only when
8 and as the Legislature determines by the Legislature
9 or whether it can be called into being by some other
10 group.
11 MR. MARTINEAU: Mr. Chairman, I thought the
12 question was whether the Constitution was to direct
13 the Legislature to create the regions and then all other
14 questions were being left to the future, or whether
15 the Constitution merely said that the Legislature could
16 create regional governments. I thought that was the
17 issue.
18 THE CHAIRMAN: If you want to put it that
19 way, we can. I think one involves the other. Mr. Miller.
20 MR. MILLER: I want to know whether what
21 we are voting on would deprive the Legislature of the

1 right to say it won't be done.

2 In other words, I personally wouldn't want

3 to vote another restriction on our Legislature that

4 represents the whole state and I don't approve of

5 setting up a bit of machinery that would allow local

6 units to do something without the permission of the

7 Legislature or at least if the Legislature didn't want

8 to prevent it.

9 THE CHAIRMAN: I would have to say, Mr.

10 Miller, in the light of the last comment that that

11 probably is the next question and not the question

12 presently presented. I suppose what you want as the

13 question presently presented is the way Mr. Martineau

14 last phrased it, namely, whether the Constitution shall

15 merely authorize the Legislature to create regional

16 governments or whether the Constitution shall say that

17 the Legislature shall create regional governments.

18 Now this doesn't resolve very much in my

19 mind but maybe this is the way you prefer it.

20 DR. BURDETTE: Not create regional governments,

21 but create regions. Isn't that the distinction you make?

1 THE CHAIRMAN: Yes, regions.

2 MR. CLAGETT: And provide the skeleton of

3 government for those regions.

4 MR. SCANLAN: It would ease the burden

5 on the Chair if Mr. Martineau would put the proposition

6 in the form of a motion duly seconded and then we can

7 vote on it that way.

8 MR. MARTINEAU: Mr. Chairman, I think the

9 conflict here is between the Committee's 11.01 (b)

10 and the staff memo 11.02(a). It is whether the General

11 Assembly may provide for law for the creation of

12 regional governments and 11.02(a) is the state shall

13 be divided into blank regions for which regional repre-

14 sentation --

15 THE CHAIRMAN: Except 11.02(a) embraces

16 the other problem.

17 MR. MARTINEAU: I realize that, but the

18 state shall and the General Assembly may is really the

19 issue.

20 THE CHAIRMAN: Let's say the issue is whether

21 it shall be permissive or mandatory, meaning by permissive

1 that it is the Committee draft that the Legislature is
2 authorized to provide regional governments and regions
3 and the alternate, the mandatory being that the
4 Constitution shall require the Legislature to establish
5 regions.
6 Is there any further question or discussion?
7 All right, a vote aye is a vote in favor of
8 the permissive form, committee form. All those in
9 favor, please signify by a show of hands. Contrary.
10 The motion is carried twelve to six.
11 Now this leaves me in a quandry as I put it
12 previously, because it seems to me that if your decision
13 here is that the provision in the Constitution shall
14 be merely permissive, there is no question to put up
15 to the Commission as to whether the regional government
16 may be called into being by anyone else.
17 It seems to me you have already resolved
18 that.
19 MR. BROOKS: I would think not.
20 MR. MARTINEAU: Once the Legislature acts,
21 then the question is, in other words, once the Legislature

1 acts in forming regions, then the next question is or
2 the next questions are how many regions will there be,
3 will there be any restriction on the Legislature in
4 creating regions and secondly whether the Legislature,
5 only the Legislature can activate the regional
6 government or can some other body do it.
7 THE CHAIRMAN: All right, let's take up
8 next the question of whether the Constitution should
9 have any limitation on the number of regions to be
10 created by the Legislature, if it creates any and if
11 so, what the number would be.
12 MR. CLAGETT: Mr. Chairman, I don't want to
13 make it any more confusing, but I still don't think we
14 have determined the question of whether or not, although,
15 I think it is implicit and maybe this is really for
16 clarification, the staff report and your report include
17 a skeleton for regional government and provide for a
18 method of a charter being drawn either by the local
19 units themselves or by the General Assembly and either
20 giving to that newly created unit certain powers.
21 That is what I thought we were speaking about when we

1 were directing our attention to a, to the Constitution
2 requiring regions and a skeleton of their government.
3 By our vote where we, were the Committee recommends
4 merely that the General Assembly may create regional
5 governments, is it implicit that we are not going ahead
6 and recommending any particular structure either in the
7 form of a charter or other skeleton?
8 THE CHAIRMAN: That's true.
9 MR. CLAGETT: Very well.
10 THE CHAIRMAN: Now the question for discussion
11 is whether, if the Legislature creates regions, there
12 shall be any constitutional limitation on the number and
13 if so, what the number should be.
14 JUDGE ADKINS: I would speak in favor of
15 no constitutional limitation and I would use what I
16 consider to be prime Exhibit A, that the opportunity to
17 make an error is contained in the Chairman's draft of
18 11.02 where he creates an Eastern District consisting
19 of ten counties.
20 THE CHAIRMAN: Ten. It should be nine.
21 JUDGE ADKINS: Nine counties which would
thereby create a governmental unit which is 150 miles

1 long, which is no more similar, no more similarity
2 between the problems of Cecil County in which we are now
3 and the problems of Somerset County than there are
4 between day and night and a governmental area comprising
5 that area should it ever need a reasonable government
6 would simply be impossible.
7 I point that out simply to say that again
8 it seems to me impossible at this stage in history
9 to regionalize the state in an effective way in the
10 Constitition. Had this problem arisen twenty years
11 ago, I suspect that the proposals made here would have
12 been completely different. I don't know what they have
13 been.
14 MR. MILLER: If I can interrupt, it would
15 make an oyster stew.
16 JUDGE ADKINS: I would urge that first that
17 there be no limitation. If that fails, I will urge
18 that there be at least five if the five are going to be
19 the ones you propose.
20 DR.JENKINS: Mr. Chairman, despite the hard
21 and insidious and effective work of Mr. Clagett's Committtee,

1 I just don't think that this Commission has had or
2 can have sufficient time to study all of the ramifications
3 of regional government. I was a member of the Governor's
4 Metropolitan Area Commission a few years ago.
5 As I recall, we met for two years just on
6 the Baltimore Metropolitan Area and came out with
7 several volumes and when this question is resolved, it
8 seems to me it is going to require a considerable more
9 study than this Commission can give it. Therefore, I
10 am in favor of not placing limitations on the General
11 Assembly in the Constitution on this matter.
12 THE CHAIRMAN: Any further discussion?
13 I want to add just one foot note and that is to say that
14 I echo the views expressed by Judge Adkins and lest
15 you wonder why I prepared this in this way and then
16 expressed that view, let me say that this plan of
17 regions is the plan recommended by the Regional Planning
18 Council if there be regions created as of today.
19 I would not be concerned about putting all
20 of the Eastern Shore into one region so long as the
21 Legislature had the power to increase the number of

1 regions. As a matter of fact, I rather suspect that
2 that will be the one problem to provoke legislative
3 action in a hurry, that there will be an amendment right
4 there that we have the lower half of the Eastern Shore
5 region in the upper half of the Eastern Shore region
6 or half of the Choptank in the upper Choptank. I
7 recognize the problem the staff has pointed out, John
8 Brooks has pointed out so forcibly that if this
9 division into regions is carried to an extreme, you
10 accomplish nothing. All you have done is create another
11 mass of governmental units that is unwieldy.
12 On the other hand, I would certainly at this
13 time say there had to be at least six regions because I
14 would certainly want to admit the possibility at least
15 that the Eastern Shore could be divided into two and if
16 I progressed to six, I could very rapidly progress to
17 seven to eight to nine to ten. I therefore on balance
18 would not favor the limitation.
19 MR. SCANLAN: Now that you have revealed you
20 are not the anonymous author of this particular document.
21 THE CHAIRMAN: Oh, but I am. In the solitude

1 of my own office I did it.

2 MR. SCANLAN: This particular paragraph

3 read like an order of the Union Army Circa 1865.

4 MR. CLAGETT: I might in fairness also say

5 that this drafting job was undertaken by Mr. Eney at

6 the request of the Committee because we did want to

7 have before the Commission alternative approach defined

8 as well as we thought the most able person could define

9 it. That is exactly what he did undertake to do. So

10 as I point out, he did it in two days. I am not going

11 to limit it to that because we have been digesting this

12 thing from the very first meeting of the Committee and

13 Dr. Jenkins, one of the very first policy questions

14 that was considered by this Committee was whether or not

15 we were going to hold onto the counties and cities at

16 that time as basic political subdivisions or whether we

17 were going to approach the problem from a new point of

18 view, namely from a reginal point of view.

19 Now that approach was not the approach that

20 we are dealing with now entirely. It was a much more

21 restricted approach. But we have been all the way through

1 this year and a half digesting this regional concept and
2 we feel without repeating everything that has been said
3 that in essence it is a concept which time and the
4 future is going to have to define rather than our under-
5 taking to define it at the present time.
6 Now there is only one other thing that I
7 would like --
8 THE CHAIRMAN: Is this on the question now,
9 the number of regions because I want to get a vote on
10 it.
11 MR. CLAGETT: It seems to me and this is
12 more or less a basic concept to some extent too, that
13 where a group of counties or where, let us say, more than
14 one county or even one county wants to have a region
15 created and wants that region created because of the
16 problems which they are confronted with and can't solve
17 because they transcend the boundaries of the particular
18 county, and go over into the neighboring counties, that
19 there is nothing to stop the representatives in the
20 General Assembly from that area bringing this matter
21 before the General Assembly and having the General

1 Assembly begin to wrestle with and to define, maybe only
2 one region and that would be the number appropriate
3 at that time and then if, as they aired the problem
4 as it has been brought before them by the representative
5 from that area, then maybe it will stimulate the
6 representatives of another area so that they come up and
7 then possibly two regions result from such action and
8 so on you can carry the thing to the point.
9 True, there may be 12 such regions but there
10 may be only two regions at that time and should we
11 really at this time try to determine out of the thin
12 air and the thin air because we don't know what we are
13 dealing with entirely in every respect an arbitrary
14 number and so restrict in a way which really might be
15 an unwarranted restriction at the time when the problem
16 is directly being debated and considered.
17 THE CHAIRMAN: Now the question arises on
18 the policy question as to whether the Constitution shall
19 specify the number of regions which can be created by
20 the Legislature. A vote aye will be a vote in favor of
21 a constitutional limitation and if that is in the majority,

1 then we will take another vote on how many. A vote no
2 will be a vote against any constitutional limitation
3 on the number of regions. Mr. Miller.
4 MR. MILLER: Would this define a minority
5 or a limit on the number of counties that would be involved
6 in a region?
7 THE CHAIRMAN: No, it would not.
8 MR. MILLER: It would just occur to me that
9 the approach should be that it would, to have a
10 region you ought to have X number of counties rather
11 than if you limit the number of regions.
12 THE CHAIRMAN: This would not. I might say
13 to you, Mr. Miller, that that phase of the matter has
14 been discussed in Committee and by others and it runs
15 into great problems. I think you can consider the
16 possibility that in the future you may have a situation
17 where you are dealing not with counties as you know
18 them today or as their boundaries are today. I think
19 you get into confusion worse than boundaries really.
20 MR. MILLER: I think so too but my thought
21 is if you put an arbitrary limit as to the number of

1 regions in the Constitution, you make it inflexible
2 and impersonal against putting a number.
3 THE CHAIRMAN: A vote aye is a vote in
4 favor of a constitutional limitation on the number of
5 regions. A vote no is a vote against any constitutional
6 limitation on the number of regions. All those in
7 favor, please signify by a show of hands. Contrary.
8 The vote no is carried. The vote is nothing to eighteen.
9 In other words, the vote is unanimous against
10 any constitutional limitation on the number of regions.
11 Now I would assume that the next question then that you
12 want to consider is whether a, once a region is
13 created by the Legislature whether a regional government
14 can be called into being by any agency other than the
15 Legislature. Mr. Martineau.
16 MR. MARTINEAU: I would like to speak in
17 favor of once again the Committee draft and in opposition
18 to the staff draft for this reason. First of all, I
19 think the only reason you would permit a body other than
20 the Legislature to call a regional government into
21 opposition is because you think it is more likely going

1 to occur and I think this matter of, I think for a
2 state to draft into the Constitution a political game
3 which you think is more likely to achieve the result
4 you want, and secondly, I think it is a mistake to
5 think the Legislature isn't going to do this if the
6 region or the people in the region want it to be done.
7 I think if they want it to be, if the local
8 governing body, a substantial number of people in the
9 community or in the region that want the regional govern-
10 ment to be created, the Legislature is going to do it.
11 Lastly I think it would be a serious mistake
12 to permit the creation of a regional government, that
13 is an entirely new functioning governing body governing
14 a substantial portion of the state without the consent
15 of the Legislature.
16 I think this is uniquely a question that
17 can be decided only by the Legislature and should be
18 decided only by the Legislature. For that reason I
19 would hope the motion would fail or pass, I am not sure
20 which.
21 DR. BURDETTE: If I understand this question

1 correctly, first of all, as we have it, the Legislature
2 would have to set up some kind of general framework
3 for regional government.
4 THE CHAIRMAN: No, I would not say that.
5 The vote that was taken was that the Legislature would
6 first have to create a region.
7 DR. BURDETTE: Exactly.
8 THE CHAIRMAN: And the question now is
9 whether the Legislature shall set up the framework of
10 government or called into being by some other way.
11 DR. BURDETTE: Your wording is much better
12 than what I tried to word. I am impressed by the
13 point Mr. Martineau made has been taken care of under
14 the presumption we are operating under. The Legislature
15 has already said that there may be regions.
16 MRS. FREEDLANDER: The Constitution is saying
17 it.
18 THE CHAIRMAN: No, Dr. Burdette is correct
19 in that the Legislature has gone one step further
20 than that, I would say, and said these are the regions.
21 DR. BURDETTE: I am not quite sure what we

1 are talking about. Let me say I would favor that if
2 the Legislature says there may be regions then I would
3 favor the activation either by the Legislature or some
4 popular action.
5 THE CHAIRMAN: I take it the effect of the
6 previous vote is that the Legislature and only the
7 Legislature can define a region.
8 DR. BURDETTE: Yes.
9 THE CHAIRMAN: And create the region?
10 DR. BURDETTE: Correct.
11 THE CHAIRMAN: This does not mean regional
12 government?
13 DR. BURDETTE: Correct.
14 THE CHAIRMAN: We are now considering the
15 next question.
16 DR. BURDETTE: Yes, sir.
17 THE CHAIRMAN: In providing the government
18 for a region as the Legislature has defined a region
19 and who can do so.
20 DR. BURDETTE: Yes, sir. I would like to
21 speak for the point that in my judgment, Mr. Martineau
is essentially correct in that the Legislature must act

1 first. Then the question turns, should the people of
2 such a region be able to activite. I would favor that
3 because I don't mean it should be exclusive, I think it
4 should be activatable either by the Legislature or the
5 people because I think every now and then people in
6 public office and place get a certain vested interest
7 and there comes times when I hope would be as infrequent
8 as possible that the people must move to make a change.
9 Now this is exactly the same principle that
10 we apply with respect to the charter government in the
11 state.
12 THE CHAIRMAN: Mrs. Freedlander.
13 MRS. FREEDLANDER: We have had precedent
14 in the existing Constitution providing for classification
15 of cities. I am not speaking in favor of that and
16 there has been no classification of cities so you could
17 provide in the Constitution for including regional govern-
18 ment and intergovermental authorities and never have
19 it activated and we know in the Baltimore Metropolitan
20 area that the county executives of Anne Arundel County
21 and Baltimore County and the Republican Mayor of the

1 City, all of these Republicans tried to organize
2 a volunteer organization and found themselves hamstrung.
3 There could be instances when the Legislature would not
4 want to activate this and if the people of the county
5 wanted it activated, then the Legislature might set up
6 an organization for doing this. I am in favor of allow-
7 ing for these three alternatives.
8 MR. CLAGETT: We are getting ourselves into
9 an area of confusion which is really one that practicalities
10 would justify. Taking the experience of Article 11(a),
11 and we don't know what 11(f) will be, the Constitution
12 in Article 11(a) provides a means by which a charter
13 may be enacted through the medium of a charter board and
14 that lay dormant or lay dormant in the Constitution for
15 many, many years and really did a great deal of harm
16 because what it did, it stimulated a fight, particularly
17 in Prince Georges County, between factions where if
18 the matter had been provided by the Legislature, no such
19 fight would ever have taken place.
20 Using that as an experience, it seems to me
21 that the Constitution to go ahead and provide for

1 multiple choice is creating a situation quite similar
2 that took place with respect to charter and really
3 prevented charter even though it is the best structural
4 form of government from coming into being long before
5 now.
6 So it seems to me that really another aspect
7 of the thing dealing straight with practicalities, there
8 is again, and I don't want to repeat it in detail, but
9 you have got representatives from the local areas in
10 the General Assembly. They are there for a specific
11 purpose of trying to carry out the wishes of the area
12 which they are representing. Through tne medium of
13 those representatives, it seems to me that provision
14 can be made to allow for a choice from the area in the
15 creating of the structure of these regions once the
16 General Assembly has acted. There would be nothing to
17 stop the bill which is enacted by the General Assembly
18 at that time having determined that regional governments
19 shall come into being the methods after procedures as
20 to how they shall come into being. We are now trying
21 to write or do the job of the General Assembly at a

1 time when we don't have the necessary information and
2 materials to work with.
3 THE CHAIRMAN: Mr. Gentry.
4 MR. GENTRY: Throughout the Committee's
5 report, Mr. Clagett has referred to the aim of remaining
6 flexible. Now here is a proposition suggested by the
7 staff that would allow flexibility. It would allow
8 this activation of the regional governments in any of
9 these three ways. Now in reply to Mr. Martineau's
10 suggestion that this is a matter of state importance and
11 should be treated by the General Assembly, as I read
12 the staff's draft, any power, once vested, can be with-
13 drawn by law would allow the check and the necessary
14 check to the General Assembly to take such action as
15 may be necessary if there has been an invisible activa-
16 tion through the operation of the board, legislative
17 body within the region or the people within the region.
18 I would certainly favor any of the three
19 methods.
20 THE CHAIRMAN: Dr. Winslow.
21 DR. WINSLOW: May I suggest, sir, that it

1 seems to me that if we were to follow Mr. Clagett's
2 suggestion and leave this solely to the Legislature, we
3 would not have had even yet a charter government in
4 Baltimore County. In Baltimore County there was a
5 movement as early as 1919 to get a charter set up. It
6 failed in a vote of the people. But the delegation from
7 Baltimore County in the General Assembly has, from my
8 observation, for three decades been at odds with this
9 kind of thing and the powers of the political organiza-
10 tion there even when the final proposition came up for
11 a charter government, the people who went to the Legisla-
12 ture from Baltimore County were opposed to the formation
13 of a charter because they held the power over what
14 went on in Baltimore County through their control of
15 local legislation in the General Assembly.
16 It seems to me there are times at least
17 when the local community, the people, or the local
18 governments ought to have a chance to activate the
19 government in a region.
20 THE CHAIRMAN: Mr. Brooks.
21 MR. BROOKS: I think under the Chairman's

1 proposal because of Section 11.05 what we have achieved
2 if we were to adopt the proposed (b) section and only
3 permit the General Assembly to create regional govern-
4 ments, we would be assuring ourselves the multiplicity
5 of regional authorities because local government has
6 constitutionally the power to establish the regional
7 authorities. They would not have the power to create any
8 kind of regional government.
9 Thus we have constitutionally provided for
10 the alternative of the regional authorities and have
11 practically assured that will be the direction in which
12 the level of government between the counties and the
13 state will go in.
14 Second, I want to raise a question. I under-
15 stood the vote to be a permissive vote to give the
16 General Assembly the power to create regional representa-
17 tive governments a while ago. Since then there has
18 been some question of whether or not the General Assembly
19 would in advance have to create any regions. The draft
20 provides for the creation of regional governments.
21 I thought the vote was between whether it

1 was to be permissive or mandatory rather than the
2 Legislature would have to create the structure of
3 regions before any counties could be established.
4 THE CHAIRMAN: I am not so sure that the
5 distinction you are drawing is one that is at all clear.
6 It is not clear to me. Part of my difficulty stems
7 from the fact that as I indicated originally, I had
8 great difficulty and still have great difficulty in
9 separating in my mind the permissive vote from this
10 question.
11 It seems to me that the two are inherently
12 tied together. But I think if we get a vote on this
13 question as to who can call into being the regional
14 government, that maybe we can unravel the tangle that
15 I think we may be in. Judge Adkins.
16 JUDGE ADKINS: May I ask if we are now
17 considering the right to call into being or to origination
18 by petition so to speak and also the right of local
19 county units to call, raise, or create a regional
20 government? What I am trying to ask, I guess, is, are
21 we talking about two other ways or just one other way?

1 Are we talking about doing it by petition of the voters
2 and the right of the counties to agree among themselves
3 to the creation of a regional government. Is that
4 embraced within this single policy question?
5 THE CHAIRMAN: I think so.
6 MR. MARTINEAU: I would like to separate
7 it.
8 THE CHAIRMAN: Separate it if you want.
9 MRS. BOTHE: The issue is really after a
10 plan of regional government has been promulgated by
11 the Legislature a county can operate or is this
12 the plan itself might be initiated?
13 THE CHAIRMAN: I think what John Brooks
14 understood your previous vote to be and what I did not
15 understand it to be and the difficulty I had was because
16 I couldn't separate these two things.
17 I have great difficulty in envisioning an
18 action by the Legislature that does nothing more than
19 create regions without creating governments for the
20 regions. That is why I had initially indicated that I
21 thought this question was wrapped up in the earlier one.

1 It seems to me that you may say this. The
2 Legislature if it acts in the area of creating regions
3 may create regions and create a form of government
4 for the region or it may provide that the form of
5 government for the region shall be determined by the
6 participating governments or by members of a charter
7 board and adoption of a charter and so forth. If the
8 intent of the Commission is that when the Legislature
9 acts to create regions and to create regional governments,
10 it must do so by means of affording to the local areas
11 and the local governments the right to draft the charter.
12 Then I take it that would satisfy at least
13 some. The opposite view would be that the Legislature
14 and only the Legislature could draft and provide the
15 form of government. There is a third alternative that
16 you could conceive of, I suppose, and that is that the
17 Legislature would provide the initial form of government
18 which, could then be amended by the people or the
19 supporting governments. Dr. Jenkins.
20 DR. JENKINS: I think I am in favor of a
21 procedure -- we have voted to make this permissive and

1 it is conceivable the Legislature will not act at all.
2 I am in favor of a procedure enabling the counties or
3 the people by petition to act in the event the
4 Legislature does not act.
5 THE CHAIRMAN: Well, this was the issue
6 on the previous question.
7 DR. BARD: We voted against that before.
8 You voted against that, Dr. Jenkins.
9 MR. CLAGETT: Mr. Chairman, we are getting
10 ourselves into an area of confusion.
11 MRS. BOTHE: I second your motion, Mr. Clagett.
12 MR. CLAGETT: Let me get us out of it.
13 Take a look at 11.01(b). In there we simply say the
14 General Assembly may provide by law for the creation of
15 civil divisions, including regional governments and for
16 methods and procedures of creating, changing, and
17 dissolving counties or other civil divisions and altering
18 their boundaries.
19 So really here by the question that is before
20 the Commission, we are getting into the operative
21 function of the General Assembly and there is no need for

1 us to get into that area because as has been clearly
2 pointed out, the General Assembly, when it starts the
3 job of creating the regional governments, can do so
4 in a number of different ways and by alternative methods.
5 Number one, it can create the government
6 and that is it or number two, providing that the
7 region itself through a charter board or through some
8 other medium can determine what the structure of that
9 regional government shall be. For us to undertake to
10 mandate that now, I believe would be a mistake and
11 there is no reason for us to do so.
12 THE CHAIRMAN: Mrs. Freedlánder.
13 MRS. FREEDLANDER: I understand that we
14 are only giving three alternatives. In lieu of the
15 Legislature, there would be the people or the counties
16 as the staff memo says on Page No. 1.
17 THE CHAIRMAN: Mr. Clagett's point is that
18 there should not be that alternative.
19 MR. GENTRY: Can I ask Mr. Clagett this
20 question, in the event the Legislature does not do this
21 activation who is going to do it?

1 MR. CLAGETT: Nobody is the answer.

2 THE CHAIRMAN: Exactly.

3 MR. HARGROVE: Of course, that is exactly
4 the point because I think we are talking about a
5 Constitution and its responsibility, of course, to this
6 Commission to give some direction, I suppose, in areas
7 where, in new areas.

8 I think past history has shown us that
9 the General Assembly will probably do nothing in an
10 area such as we have here. So far as I know, they
11 have made no attempt at regional government or any such
12 thing but a proliferation of authority within the
13 counties. So I think this is clearly an area where this
14 Commission has to sort of prod the Legislature in one way
15 if they don't act, and I think the people should be
16 able to act in some way. I think Dr. Jenkins' point
17 is that if the Legislature does not go so far as the
18 permissive aspect of this, then I think the people should
19 because we all agree in the future we are going to need
20 some sort of regional government.

21 MR. CLAGETT: Mr. Chairman, I think we have

1 really, we are getting back into the very area where
2 we have already made a determination and we are getting,
3 the Commission is getting itself back into an area very
4 similar to the problem that the Committee had to deal
5 with.
6 We voted, as I understood it, a little while
7 ago, that the responsibility for determining whether or
8 not a regional government should be created rested
9 squarely with the General Assembly. Now we are moving
10 away from that determination, namely that it is permissive
11 with the General Assembly and we are creating other
12 means by which it can be accomplished, namely by the
13 people on the petition or by the action of the governing
14 bodies of one or more counties.
15 It seems to me that what we are really
16 doing is repeating ourselves rather than clarifying the
17 situation.
18 THE CHAIRMAN: Mr. Clagett, that is saying
19 exactly what I said earlier. I thought the two questions
20 were one but the Commission decided otherwise and I
21 think we will make better time now if we try to resolve

1 it.

2 DR. BARD: I voted earlier in letting the

3 people have the choice in the first place and if they

4 can't and if it operates like 11(a), which indicates

5 right now in terms of formation of home rule, the

6 General Assembly at its first session after the adoption

7 of the amendment shall by public general law apply the

8 grant of expressed powers.

9 Once this grant of expressed powers is

10 stated, then there are different ways of operating

11 after that point. Now I firmly believe that had it

12 not been for the voice of the people in Anne Arundel

13 County, they wouldn't have home rule now.

14 So the very least that I would like to see

15 happen is once the General Assembly takes the first

16 lead.--in fact, I would like to have the people have

17 the opportunity of first leave as well but we voted

18 that down in the last motion, then I would say the people

19 ought to have the right to follow in connection with

20 the specific nature of that region.

21 MR. CLAGETT: Getting into the very problem

1 that the General Assembly and counties have been dealing
2 with and now you are getting into the question of
3 whether regional governments should have home rule.
4 THE CHAIRMAN: That is precisely the point
5 and we might as well vote and then go to lunch.
6 It seems to me that you have put your
7 finger on exactly what it is and that is the question
8 of whether regional governments shall have home rule.
9 We give the counties home rule. The only difference it
10 seems to me between the counties and the region is
11 that with respect to the county we are saying that it
12 has all the powers of local government except what is
13 withdrawn by general act of the Legislature.
14 You can't do that with regions because it
15 would be inconsistent with the action as to counties.
16 Therefore, you have got to have machinery to do the
17 reverse for regions. You have got to give them an
18 expressed grant of power. It seems to me, however, that
19 subject to that one limitation the procedure ought to
20 be the same, namely that the General Assembly's power
21 to grant or withdraw powers from a region should be only

1 the power to enact a general law and that the regions
2 ought to get their powers from either the people within
3 the region or the county governments within the region
4 and that, therefore, it seems to me, that the charter
5 or form of government for a region should be as deter-
6 mined by the people or by the participating governments
7 within the region.
8 Now I am very much afraid that the vote on
9 this question could be such as to, in my mind, at least
10 to provide a substantial conflict with the previous
11 vote but that was the difficulty I had initially. If
12 it goes the other way, it won't be the conflict. So
13 let's find out what the general view of the Commission
14 membership is.
15 The question is whether or not the form of
16 the regional government, its powers, its structure, can
17 be brought into being only by or through, by an act
18 of the Legislature or through procedures prescribed by
19 the Legislature which is the provision of 11.01(b), as
20 presented by the Committee or whether it could be
21 called into being and defined independently of and hence

1 against the will of the Legislature by either the
2 participating governments or the people within the area.
3 MRS. FREEDLANDER: Just a point of informa-
4 tion. It is not against. I think you are using the
5 word against.
6 THE CHAIRMAN: No, I am using the word
7 against in the sense of not against the will of the
8 Legislature as expressed in general legislation but
9 against the will of the Legislature to the extent it
10 could not be specifically withdrawn.
11 MRS. FREEDLANDER: Could it be instead of
12 instead of against?
13 THE CHAIRMAN: I would not think so but
14 if it makes you understand it better that way --
15 DR. JENKINS: Mr. Chairman, I find myself
16 in difficulty because I do not agree with the interpre-
17 tation that our vote of the General Assembly may
18 establish these would necessarily preclude an additional
19 provision that the counties may do this in the event of
20 the General Assembly failing to do this.
21 Therefore, I cannot vote on this question

1 intelligently.

2 THE CHAIRMAN: Yes, you could because I

3 think that if the, with the majority of the Commission,

4 if they favor giving the right to the local groups to

5 determine the form of government of the region, in my

6 mind it is inconsistent with the previous vote which is

7 another way of saying that I probably misunderstood

8 the previous vote.

9 MR. MARTINEAU: Could I explain the previous

10 vote? I think the Committee can be understood

11 by looking at the staff memo draft 11.02(a). If you

12 look at the first words, the state shall be divided

13 into so many regions by law, what we have now said is

14 that the state may be divided into so many regions by

15 law. Now that we voted on. Now we are voting on the

16 second part of that which says for which regional

17 representative governments may be established in

18 accordance with law by the General Assembly by concurrent

19 action of the counties legislative body or affirmative

20 action.

21 THE CHAIRMAN: The difficulty is that it is

1 inconceivable to me that the Legislature is going to
2 pass a law creating regions and not doing any more than
3 that.
4 MR. MARTINEAU: They can.
5 THE CHAIRMAN: The question can be resolved
6 by the vote here.
7 MR. SYKES: I have a question of whether or
8 not no matter how we vote on this it would still be open
9 to the Legislature to change the regions around after the
10 citizens within a given region try to establish a regional
11 government so as to render what the citizens have
12 done ineffective.
13 It doesn't make any difference which way
14 we vote.
15 MR. CLAGETT: That is exactly right.
16 MR. MARTINEAU: And the Legislature can take
17 away all the powers.
18 MR. BROOKS: That is a separate question.
19 THE CHAIRMAN: We are not making progress.
20 Let's take a vote and then go to lunch.
21 The question arises on whether or not the

1 government of a region can be activated, brought into
2 existence, given powers only by the Legislature or in
3 accordance with methods prescribed by the Legislature
4 or whether it can be brought into being, given powers,
5 activated by the participating county governments or
6 the people of the area in the region.
7 A vote aye is a vote in favor of the
8 proposition that the regions can be brought into being,
9 activated and given powers only by the Legislature or
10 in accordance with methods prescribed by the Legislature.
11 This is the Committee's position. All of
12 those in favor, please signify by a show of hands.
13 Contrary? The noes have it, six to eleven, which would
14 mean that the regional government could be brought into
15 being by action of the local governments or of the
16 citizens of the area involved.
17 Let's have lunch and come back as soon as
18 possible.
19 (Luncheon recess.)
20 ----------
21

1 THE CHAIRMAN: As we resume the discussion
2 of the report of the Committee on Political Subdivisions,
3 may I as much for my own edification as for
4 clarification of the record submit again to a vote
5 without debate, merely so that I can see just what the
6 sense was before, the question of whether the Legislature
7 shall have the exclusive right. That is not what
8 I want to say either.
9 I was confused, as I indicated before lunch
10 if the last vote turned out the way it did, because it
11 would seem to me to be in conflict with the earlier
12 vote, as I understood it, on the permissive effect.
13 I take it that the combination of the two
14 votes means that the majority of the Commission feels
15 that the Constitution should contain a provision authoriz-
16 ing the Legislature to create regions and regional
17 governments but not requiring it to do so and the
18 second vote means that if the Legislature creates regions
19 and regional governments, then the form of government
20 for a region may be as directed or approved by the
21 participating governments or by the people of the area

1 involved and to me that means that if the regional
2 government is established or a form of regional govern-
3 ment provided by act of the Legislature, the act of the
4 Legislature must either submit that to a referendum or
5 provide that it is subject to change by the action of
6 the local governments or the people of the area.
7 If there is a different interpretation
8 of the combination of the two votes, I don't know,
9 understand what it is. Does anybody have any different
10 interpretation? Mr. Sykes.
11 MR. SYKES: I was with the Chairman up
12 until the last point but I understand that the vote
13 means in effect that the ultimate control is in the
14 Legislature, that the people can, if they want to
15 create a regional government and within a region but it
16 must be within the region determined by the Legislature
17 and the -- if the people start it, the Legislature can
18 change the region and render the vote --
19 THE CHAIRMAN: You are talking about the
20 region rather than the regional government?
21 MR. SYKES: That is right. I understood the

1 distinction was between the region and the regional
2 government and the vote was based upon the assumption
3 that the Legislature might act to create regions without
4 creating a regional government which was the very
5 assumption that the Chair found it almost impossible
6 to make.
7 THE CHAIRMAN: Exactly, and I still do.
8 Mr. Martineau.
9 MR. MARTINEAU: I think we all agreed with
10 you up until the last point although I agree with you
11 on the last point, I don't think we voted on it, that
12 is the amendment of the form of government of the
13 region which is that it can be changed, I think, we should
14 permit it to be changed either by the Legislature or
15 by the governments involved or the people involved,
16 probably making everything subject to a referendum
17 vote. But I don't think we discussed that or got into
18 it at all.
19 THE CHAIRMAN: Mr. Gentry.
20 MR. GENTRY: That point is in the draft.
21 MR. BROOKS: Wait, wait, what point is that

1 now, that either may change or that either may create?
2 MR. GENTRY: May change.
3 MR. MARTINEAU: We haven't gotten that far,
4 I don't think.
5 MR. SYKES: No, Mr. Chairman, we did vote,
6 I think, to the effect that unless the Legislature
7 has acted first to create regions at least, that no
8 local government, or no local group could, together
9 define a region and establish a governmat for it.
10 THE CHAIRMAN: Well, that is what I had
11 understood but I again say that it is inconceivable to
12 me that the Legislature is going to pass a law and
13 create regions and stop.
14 MR. SYKES: Me too, and that is why I
15 suggested we weren't really voting on very much. It
16 didn't really make much difference.
17 DR. WINSLOW: It seems to me, sir, that it
18 is important for this to happen if the situation should
19 arise in which the General Assembly is persuaded in one
20 area of the state a regional government becomes desirable
21 it could at that point create regions in the state, four,

1 five, six, eight, but create a government only for the
2 one which seemed to be immediately necessary leaving
3 it to future action by the General Assembly or by
4 action of the local authorities to create government
5 in other areas, just the same as it can do with counties.
6 THE CHAIRMAN: That would be possible.
7 Mr. Gentry.
8 MR. GENTRY: While you say it is inconceivable
9 that is exactly what your draft is. Your draft, in
10 11.02 a step up 1970, these five departments.
11 THE CHAIRMAN: Yes, I understand that but
12 then I provided as an integral part of that that the
13 government of that region would be called into existence
14 by either the Legislature or the people. I do not think
15 except in the kind of situation suggested by Dr. Winslow
16 that the Legislature is going to do just that and stop.
17 I think it is going to go ahead and provide regional
18 government.
19 MR. GENTRY: It may.
20 MRS. BOTHE: Wouldn't it be some analogy
21 as to what the Legislature might do in creating regions

1 to the present Constitution where there is provision for
2 home rule and county rule but which is optional with
3 the people to initiate? I look upon what the
4 Legislature might end up doing as precisely the same
5 kind of thing.
6 MR. CLAGETT: I have a question of Dr.
7 Winslow. Assuming for the moment that the General
8 Assembly created a region composed of, let us say, two
9 counties. And then assuming that a structure, however
10 it came about, for the operation of that government
11 came into existence and the General Assembly later passed
12 a law saying that there should be no bb guns in that
13 region -- wouldn't that run afoul of our restriction
14 upon the General Assembly to pass local laws?
15 DR. WINSLOW: No, no.
16 MR. CLAGETT: It would only affect two
17 counties, the region.
18 DR. WINSLOW: But this would be under your
19 general rule for classification.
20 MR. CLAGETT: No, that is the next question.
21 Do you contemplate that the creation of a region would

1 be defined by a classification?

2 MR. BROOKS: I do not think so.

3 MR. CLAGETT: I wouldn't think so either.

4 Then it would run afoul upon the restriction of the

5 General Assembly to pass local legislation.

6 MR. BROOKS: I wouldn't think so.

7 MR. SYKES: Can I address myself to that?

8 THE CHAIRMAN: Yes.

9 MR. SYKES: This was a question I was

10 going to raise. The power of classification in the

11 draft, this raises another question, power classification

12 in the draft is limited to counties. There is no

13 limitation on the power of the General Assembly to

14 legislate with respect to intergovernmental authorities

15 or regions but the Legislature could take a section of

16 Montgomery County and out of Montgomery County and add

17 it to Howard County without changing the boundary of

18 either county. What it would do would be to create a

19 region consisting of one county and part of the other.

20 It would give that region plenary governmental power,

21 do nothing about the territories of the counties as such.

1 The home rules amendment would apply to
2 counties only, the Legislature could effectively govern
3 by its power over regions. It could do the same kind of
4 thing with intergovernmental authorities. It could set
5 the salaries of officers and say how many clerks could
6 be employed and, as I read this draft now, I hope to
7 be corrected if I am wrong, there is no restriction
8 whatever upon the Legislature so long as it governs
9 locally through authorities and regions rather than
10 through counties.
11 THE CHAIRMAN: Mrs. Freedlander.
12 MRS. FREEDLANDER: That is precisely why
13 we wanted to have the powers these regions would have
14 would be only the powers which the counties gave them
15 in a joint, tri-joint resolution or action.
16 MR. SYKES: I don't know what the recommenda-
17 tion is but I would like to know if I am correct in my
18 reading of the draft.
19 MR. CLAGETT: I think the answer is that
20 if it attempted to do so, it could create these inter-
21 governmental authorities. It could create the regions

1 but if it attempted to legislate through the region or
2 through the intergovernmental authority, it would be
3 subject to the restriction imposed and can only do
4 so by general law as defined.
5 MR. HAILE: I don't think so.
6 DR. BURDETTE: I have read the language and
7 I don't think that is in the language.
8 MR. CLAGETT: Which one were you reading,
9 Franklin?
10 DR. BURDETTE: I was reading 11.02.
11 MR. CLAGETT: Of the Staff?
12 DR. BURDETTE: No, of yours.
13 MR. GENTRY: Read the staff.
14 MR. CLAGETT: Insofar as our draft is
15 concerned and the recommendation of the Committee is
16 that we do not impose any discriminatory restrictions
17 other than the General Assembly only may provide for
18 the basic units of government, namely the counties or
19 other civil division which may include regional governments
20 or intergovernmental authorities.
21 MR. SYKES: Can I point out that you define

1 civil divisions as including regional governments and
2 you commit the Legislature to provide for both of
3 them and then you have in (b) of 11.02. a system of
4 classification for counties only and then in (d) of
5 11.02 you have an express authorization for civil
6 divisions which include regional governments to adminis-
7 ter single or multi-purpose functions that transcend
8 local boundaries and grant to them power to collect
9 taxes and so on and there is no restriction in (d)
10 which is an independent grant of power, no restriction
11 upon the Legislature exercising, in effect, the power of
12 local government upon each of them and if you did this,
13 the Legislature could maintain the status quo, in effect,
14 and negate all the effect of the home rule provisions
15 designed to give the residual power to the county.
16 I don't know that we can do anything about it here but
17 it seems to me to be a very serious gap in the draft in
18 some way and somebody ought to do something about it.
19 THE CHAIRMAN: Let me break across the
20 discussion and make a few decisions that we have to make
21 in order to make progress. I realize that we have not

1 resolved all the problems in connection with regional
2 governments or how we are going to create them. I
3 think we have resolved all we can resolve right now
4 unless we just drop everything else and concentrate on
5 this which we simply can't do. I am therefore going to
6 suggest that we move to Section 11.02 and the other
7 sections keeping away except to highlight problems aris-
8 ing out of the regional government concept to see if we
9 can at least get the rest of it in reasonably good
10 condition, and I think in a half hour we will simply
11 have to suspend this discussion and move to consideration
12 of the other matters and then if we can conclude the
13 other matters, come back to this.
14 But otherwise, there are very urgent matters
15 we must act on this afternoon that we will not reach.
16 Can we do that, Mr. Clagett?
17 MR. CLAGETT: Yes, Mr. Chairman, and I am
18 now directing your attention to Page 13 of the Committee's
19 Sixth Report and there we begin with Section 11.02,
20 powers of counties and other civil divisions, Subsection
21 (a), a county may exercise any power or perform any

1 function which is not denied to it by and I would like
2 to insert there, this Constitution, by its charter or
3 by law which in its terms and in its effects is applicable
4 to all counties or to all counties of its class and
5 which has not been transferred to another civil division.
6 THE CHAIRMAN: Any questions?
7 MR. SYKES: I would like to ask for the
8 elimination of the words in its terms and in its effects.
9 I would move it be eliminated.
10 MR. SCANLAN: Second.
11 THE CHAIRMAN: Any discussion? Mr. Clagett.
12 MR. CLAGETT: The Committee would very,
13 very strongly oppose the passing of that motion by
14 reason of the fact that as explained yesterday a
15 considerable amount of research was done to attempt to
16 find the best medium of defining what is meant by a
17 general law and out of some 50 meanings of definitions
18 the one which was most effective was this term in its
19 terms and in its effects. It has been given a definite
20 meaning by the courts.
21 It has a definite meaning insofar as the

1 governmental writing and authorities on government are
2 concerned and it is one which we feel to be most
3 effective insofar as placing upon the general assembly
4 the restriction of passing local legislation.
5 Therefore, we would very strongly urge that
6 this phrase not be stricken.
7 THE CHAIRMAN: Any further discussion?
8 Mr. Scanlan.
9 MR. SCANLAN: It is just saving a little
10 language, the law is either applicable to all counties
11 or all counties in its class, it is a general law.
12 THE CHAIRMAN: Mr. Brooks.
13 MR. BROOKS: The only point on that, this has
14 been pretty much the language of the present Constitution,
15 that is to say that it shall be applicable to all
16 counties and the reason for expanding on it in two or
17 three places in this article is that the present Court
18 of Appeals has interpreted this nevertheless to mean
19 that you can pass, that is the Legislature can pass
20 laws applicable only to two or more counties so that it
21 was felt that you again have to provide that you really

1 mean that it must be applicable to all the counties
2 if you are to overcome the juducial precedents set at
3 this point.
4 THE CHAIRMAN: What is the existing language?
5 You know the reference.
6 MR. CLAGETT: Its terms or its effects
7 applicable to two or more counties.
8 MR. SYKES: That is no problem. Two is
9 enough.
10 MR. MARTINEAU: That is hardly precedent
11 that has to be overcome.
12 MR. SYKES: The example of strip mining is
13 a good example.
14 THE CHAIRMAN: Where is the provision,
15 Hal, do you know?
16 MR. CLAGETT: Let me see. It is, well, it
17 is in 11(f), Section 4, Page 85, that is dealing with
18 code counties.
19 MR. BROOKS: This doesn't have the two or
20 more. This uses Section 4, Article 11(f).
21 MR. CLAGETT: Then it is in Section 4, 11(a),

1 Page 76, any law so drawn as to apply to two or more
2 of the geographical subdivisions of this state shall
3 not be deemed a local law.
4 THE CHAIRMAN: Well, isn't that the basis
5 for the decisions of the Court of Appeals?
6 MR. SYKES: Yes.
7 MR. CLAGETT: We are very strongly of the
8 opinion that that is not what we contemplate as being
9 definitive of a general law. Here, by mere application
10 to two or more, it is construed to be a general law.
11 On the other hand, we say by terms and effect a general
12 law is one which applies to all counties or all counties
13 within a class and we want to depart without any question
14 or doubt from the definition here given to what consti-
15 tutes a general law.
16 DR. BURDETTE: There is another type of law
17 we are trying to avoid that is one which is alcohol,
18 all the counties of the state with the exception of the
19 following two which some people call a public exemplary
20 law.
21 MR. CLAGETT: I might point out further this

1 action of the Committee was as a result of a very
2 strong recommendation being given by Dean Fordham
3 that when you attempt to define general law, the proper
4 definition should be as used here, one which in terms
5 and effect apply to all counties rather than to the
6 contrary, anything to the contrary.
7 MR. SYKES: It may not have effect in all.
8 It seems to me you are limiting the concept of the
9 general law. I think we might as well vote on it.
10 MR. CLAGETT: Mrs. Kostritsky might ask
11 you to make the comment there.
12 MRS. KOSTRITSKY: This is perhaps a bit
13 different whereby if the law had been held to be a
14 general law which provides a different method for
15 docketing cases in county A from that in county B or
16 a general law which sets the salaries of sheriffs and
17 sets it in a different way are different laws, so long
18 as it legislates in the field, legislates from county
19 to county.
20 It has been determined to be a general
21 law so long as it deals with the same subject.

1 MR . SYKES: You mentioned be uniformly
2 applicable. That is much different from applicable in
3 its terms and effects because it may be uniformly
4 applicable in its terms and may have different effects
5 in different counties and may have no effect in some.
6 THE CHAIRMAN: It seems to me the phrase
7 uniformly applicable would be better than the other
8 phrase.
9 DR. BURDETTE: How about uniformly applicable
10 in its terms and effect?
11 MR. CLAGETT: I think as the courts have
12 determined in terms and effect it has been given the
13 interpretation of uniform in its application and since,
14 as I mentioned earlier, the words have been given
15 judicial interpretation and are subject to definition
16 that the Committee would prefer to continue to use those
17 terms rather than effect another term which may have to
18 go through the process of definition when brought into
19 question in the future.
20 MR. BROOKS: I was going to refer you to
21 Article 11(e), Section 1, except as provided elsewhere

1 in this article the General Assembly shall not pass
2 any law relating to incorporation, of those organizations,
3 which will be special local in its terms or in its
4 effects, et cetera.
5 MR. SYKES: That distinguishes between the
6 two and if you require it both for terms and for effect.
7 MR. CLAGETT: Which article is that?
8 MR. BROOKS: Article 11(e), Section 1.
9 MR. CLAGETT: In there terms and effect
10 apply alike to all municipal corporations. There again
11 is the use of that term insofar as that constitutional
12 writing is concerned and has been defined and
13 consequently we would like to hold onto the definition
14 as stated.
15 THE CHAIRMAN: Mr. Sykes, do you amend
16 your motion to substitute the word uniformly?
17 MR. SYKES: Yes, sir.
18 THE CHAIRMAN: Who seconded the motion?
19 MR. SCANLAN: I did. I accept the amendment.
20 THE CHAIRMAN: The question arises on the
21 motion to amend Section 11.02(a) to strike out the words

1 which in its terms and in its effects and substitute
2 the word uniformly. Is there any further discussion?
3 Ready for the question?
4 All those in favor of the motion, signify by
5 saying aye. Contrary, no. The Chair is in doubt.
6 All those in favor, signify by a show of hands.
7 The motion fails eight to nine. Any further
8 discussion as to Section 11.02. 11.02 (b).
9 MR. CLAGETT: Classes of counties as
10 defined shall be not more than five and shall not,
11 and shall include at least three counties in any one
12 class and shall be based upon population only. There
13 shall be in effect only one classification at any one
14 time and a new classification shall wipe out an old one.
15 MR. HOFF: We don't have that language.
16 THE CHAIRMAN: Where is that you are reading
17 from?
18 MR. CLAGETT: My hand is called.
19 THE CHAIRMAN: You want to change it.
20 MR. CLAGETT: Classes of counties based upon
21 population as determined by the most recent United States

1 census or upon such other criteria as are determined
2 by the General Assembly to be appropriate may be
3 provided by law with not more than five classes and not
4 less than three counties in any one class. No more
5 than one classification shall be in effect at any one
6 time but the classification may be changed at any time.
7 MR. MARTINEAU: Wouldn't it be much easier
8 to say such other criteria as determined by law? That
9 says the same thing as determined by the General Assembly
10 to be appropriate.
11 MR. CLAGETT: I think implicit here is
12 a policy question of whether you are going to have the
13 classes based only upon population or upon --
14 THE CHAIRMAN: That is not his question.
15 His question is merely a matter of --
16 MR. CLAGETT: I have no objection to the
17 change.
18 THE CHAIRMAN: Under the rules we have
19 been following, when you say General Assembly without
20 using the expression law, you would mean only the General
21 Assembly. That is not what you intend, I take it, you

1 mean by regular bill, by law?

2 MR. CLAGETT: I think it is only the

3 General Assembly so I would have to oppose the motion.

4 MR. MILLER: You don't want the Governor

5 to have the right of veto?

6 MR. CLAGETT: Not on this question, no.

7 MR. BROOKS: Not on that question.

8 MR. MARTINEAU: Well, just say as determined

9 by the General Assembly then.

10 THE CHAIRMAN: I point out to you that

11 you have an apparent inconsistency in that you have

12 classes based on population would be determined by law

13 but classes based on any other criteria would be deter-

14 mined by the General Assembly. Do you really intend

15 that?

16 MR. CLAGETT: That is exactly what we intend

17 and we intend to present this as a choice on the basic

18 question of whether you are going to have the two

19 alternatives or only one.

20 MR. BROOKS: Wait, I think there is a

21 difference in what is being discussed here again and

1 that is whether or not there is to be a bill prior to
2 the classification stating what the basis of classifica-
3 tion shall be or whether or not there shall be a deter-
4 mination by the Legislature in the bill establishing
5 classification which will be subject to gubernatorial
6 veto as to what the basis will be and that basis being
7 census or as population or otherwise.
8 In other words, it is only one legislative
9 step and not two.
10 MR. SYKES: The section now provides that
11 whatever the basis and whoever determines the basic
12 classification may only be provided by law so the net
13 result of what the Legislature does is going to be
14 subject to gubernatorial veto.
15 MR. BROOKS: That's right.
16 MR. SYKES: I see no point to making any
17 distinction.
18 MR. BROOKS: Except there is no need to have
19 two legislative processes, one establishing the basis
20 of classification and then determining classification.
21 MR. SYKES: I don't see this requires you

1 to go through two. The General Assembly makes a
2 determination. It makes a determination which is
3 implicit when it writes its bill.
4 MR. BROOKS: That is what I read in here.
5 MR. SYKES: And the words by law provide
6 whatever protection has to be provided because the final
7 product is subject to scrutiny and doesn't make any
8 difference whether the basis as such is reviewable or
9 nonreviewable.
10 MR. BROOKS: That's right. We don't disagree.
11 MR. SYKES: You can't separate the two of
12 them in any meaningful way. So I suggest the question
13 poses, the section poses no policy question.
14 THE CHAIRMAN: Wouldn't the proper language
15 be classes of counties based upon population as deter-
16 mined by the most recent United States Census or upon
17 other criteria as may be provided by law?
18 MRS. FREEDLANDER: Yes.
19 THE CHAIRMAN: Any objection to that change?
20 Strike out the parenthesis, strike out such and strike
21 out as are determined by the General Assembly to be

1 appropriate, close of parenthesis. The first part of
2 the sentence would read classes of counties based upon
3 population determined by the most recent United States
4 Census or upon other criteria as may be provided by
5 law. Any further question with respect to paragraph B?
6 Paragraph C?
7 DR. BURDETTE: Yes, I am mixed up. The
8 text on Page 13 is different from the text on Page 2.
9 Do we ignore Page 2?
10 MR. BROOKS: Yes, the only difference is
11 that which was in the parenthesis. So just use the
12 latter version.
13 MR. MARTINEAU: Any other changes? I have
14 been using the front part exclusively.
15 MR. BROOKS: That's all.
16 MR. CLAGETT: I must confess I ran afoul
17 of this in here by surprise.
18 THE CHAIRMAN: Then paragraph C.
19 MR. CLAGETT: Public general laws may be
20 enacted which shall in their terms and in their effects
21 apply without exception to all counties or to all

1 counties in a class. No county shall be exempted from
2 any public general law.
3 THE CHAIRMAN: Applicable to other
4 counties in its class. Add that at the end of the
5 section. Any questions? Mr. Clagett, I have one concern
6 about this and that is couched in the language which is
7 used here, it does not to me convey the notion of
8 absolute prohibition against local laws. Is there any
9 difficulty in saying that the General Assembly may enact
10 only public general laws which shall and so forth.
11 MR. CLAGETT: No, I think that would tend
12 to clarify what the Committee is thinking here.
13 MR. MARTINEAU: Is that really the
14 definition a public general law is one enacted by the
15 Legislature? A public local law is one enacted by
16 some other lesser civil division.
17 DR. BURDETTE: Not now.
18 THE CHAIRMAN: I don't think that is the
19 definition. The definition is the area in which the
20 law applies rather than the body which enacts it. We
21 are saying that local laws shall be enacted only by the

1 local governing authority but it doesn't follow from
2 the definition. For instance, the Legislature hereto-
3 fore has enacted every year local laws for the county
4 and the city.
5 MR. MARTINEAU: That is correct, but we are
6 saying here that the Legislature can only enact public
7 local laws.
8 THE CHAIRMAN: We intend to say that but
9 my point is I don't think we have said it.
10 MR. SYKES: I am not sure we intend to say
11 that because that is what raises the question of the
12 interconnection between C and D. The Legislature may
13 legislate for intergovernmental authority and it may
14 legislate applicable to a regional and it is conceivable
15 that those lines may or may not be identical with the
16 classification of counties and you have got to provide
17 for some kind of relationship between the intergovernmental
18 authorities and regions on the one hand and counties on
19 the other if they are all to co-exist.
20 THE CHAIRMAN: Could you accommodate that
21 notion by a phrase such as except as may be otherwise

1 specifically provided in this Constitution, the
2 Legislature shall enact only public general laws and
3 so forth.
4 MR. CLAGETT: Of course, what you are doing
5 is putting back the very phrase stricken out of
6 subsection (d) at the first presentation and I might
7 refer you to the 5th Report where at that time we
8 said that the General Assembly, now this was the earlier
9 language, the General Assembly may provide notwithstanding
10 any other provisions of this article for the creation
11 of intergovernmental authorities.
12 Now notwithstanding any other provisions
13 of this article had to do with the restriction upon
14 public local laws and provided for an exception. Now
15 we have moved the provision for intergovernmental
16 authorities on up into the definition of civil divisions.
17 We do make a provision in subsection (d) of
18 the 6th Report.
19 THE CHAIRMAN: Well, maybe the decision
20 before was erroneous.
21 MR. SYKES: I would suggest the drafting

1 way to handle it is to say the Legislature may enact
2 only general public laws. I would like that label to
3 stick in the Constitution and then define public general
4 laws as laws applicable to and applying without exception
5 to all counties or all counties in a class or laws
6 which and then specify what kind of power you want to
7 give the General Assembly over these civil divisions.
8 MR. BROOKS: For the one reason for the
9 parenthetical comment in your draft after the first
10 printing of it in the text was to take care of the
11 problem of the regional governments if that alternative
12 were needed. That is why it was parenthetical because
13 if that classification is not to be utilized in any
14 way in dealing with regional governments or authorities,
15 then it is not desirable to have that parenthetical
16 material at all.
17 THE CHAIRMAN: What parenthetical material
18 are you referring to?
19 MR. BROOKS: You removed a couple of
20 parenthesis and some of the wording around population
21 or other criteria just a few minutes ago.

1 THE CHAIRMAN: In Paragraph B.

2 MR.BROOKS: Yes. It should only be on a

3 population basis unless the classification is also to

4 be the same that is utilized if needed to be utilized

5 for withdrawing powers from the county for the purpose

6 of granting them to a regional government. There is

7 one situation where classification would be needed in

8 regard to authorities and regional governments that is

9 to withdraw powers and that provision takes care of

10 that.

11 THE CHAIRMAN: You are hanging an awful

12 lot on a pair of parenthesis.

13 MR. CLAGETT: Where are the parenthesis you

14 are speaking of?

15 THE CHAIRMAN: Paragraph B.

16 MR. BROOKS: That is the connection of why

17 that was in there and the problem that Mr. Sykes

18 raises is the problem for that provision, whether it

19 is there or not.

20 THE CHAIRMAN: Why wouldn't it be soluable

21 by the method he suggests?

1 MR. CLAGETT: Mr. Chairman, I might suggest --
2 THE CHAIRMAN: Wait just a second.
3 MR. BROOKS: Well, you better restate it.
4 THE CHAIRMAN: His solution was to do two
5 or three things, one to state that the General Assembly
6 may enact only public general laws and then to define
7 public general laws as you do here and broaden it to
8 include laws such as would be passed to carry out the
9 provisions of Paragraph B.
10 MR. CLAGETT: Mr. Chairman, the language of
11 the 5th Report is the General Assembly shall legislate
12 for counties only by general laws which shall in their
13 terms and in their effect apply alike to all counties.
14 Then I think to all counties in its class would have
15 to be added there.
16 THE CHAIRMAN: Might I suggest that this is
17 a phrasing problem that I think the intent everyone has
18 it clear. We are within five minutes of the time I
19 said we would have to stop consideration of this report.
20 Can't we pass on?
21 MR. CLAGETT: We can handle that problem if

1 we have the intent. That is a matter of drafting.

2 THE CHAIRMAN: All right.

3 MR. SYKES: Excuse me, the next question,

4 the one question we haven't resolved is what the intent

5 is with regard to the powers of the Legislature over

6 these civil divisions and I take it that is in the next,

7 that is what you are coming right to.

8 MR. CLAGETT: Subsection (d) reads the

9 General Assembly may authorize civil divisions other

10 than counties and municipal corporations to administer

11 single or multi-purpose functions that transcend local

12 boundaries and grant to them the power to impose and

13 collect revenues, to borrow money, and to collect

14 taxes imposed by the General Assembly. Now here the

15 General Assembly is not restricted insofar as the

16 requirement of public general law is applicable to all

17 counties or to all counties in their class.

18 MR. BROOKS: I might add, if I may, that I

19 believe it was at this point Mr. Case suggested that

20 this should be amended by adding on the end of what the

21 provision now has, or other representative body, recognizing

1 that the tax or revenue may actually be imposed by
2 a body other than the General Assembly.
3 MR. CLAGETT: And I would agree with that.
4 THE CHAIRMAN: Mr. Martineau.
5 MR. MARTINEAU: What is the purpose of using
6 the word local boundaries rather than saying
7 beyond county lines. You are involving more than one
8 county. I see no purpose in applying this to just a
9 function within a single county. So you obviously mean
10 multiple county.
11 THE CHAIRMAN: No, I think it was pointed
12 out earlier that you may have a problem that is within
13 a county which is beyond the municipality line and
14 can't be solved.
15 MR. MARTINEAU: But the county can do that,
16 can't they?
17 THE CHAIRMAN: That's the policy question.
18 That's the reason.
19 MR. CLAGETT: There may be a municipality
20 divided by a few counties.
21 MR. MARTINEAU: It is still a multi-county

1 problem then.

2 MR. CLAGETT: And the General Assembly could

3 clarify it. The language takes care of either one.

4 MR. MARTINEAU: It seems to me I am improper

5 to authorize the Legislature to establish a civil

6 division which would operate solely within the county

7 and it is permitted by this section.

8 MR. SYKES: They transcend municipal lines.

9 MR. MARTINEAU: Still a county problem.

10 MR. SYKES: Sure.

11 MR. CLAGETT: This provision was drafted

12 at a time when the cities were still to continue under

13 the General Assembly rather than under the counties and

14 I would say there, Mr. Chairman, that we will have to

15 take another look at it and try to resolve that and let

16 us more or less resolve that one because I would like

17 to take the little bit of time to get into another phase.

18 THE CHAIRMAN: Let's get this policy question

19 that Mr. Sykes raises and that is the policy question

20 as to whether it is intended that the General Assembly

21 is to have the power to confer on civil divisions, regional

1 governments or any other civil division a power to
2 administer single or multi-purpose functions. Is that
3 your question?
4 MR. SYKES: Well, the question is in effect
5 is it to be able to do it without any kind of brake
6 which would prevent in effect local legislation so far
7 as these units of government are concerned. I don't
8 know the answer. There ought to be in my opinion some
9 kind of an allowing to classification for counties or
10 something that restricts them to granting or withdrawing
11 powers generally to authorities and it doesn't permit
12 them to do the administrative work for the authorities.
13 How to do it, I don't know.
14 MR. BROOKS: The concept was by restricting
15 the classification system to one and the same one being
16 applicable for all purposes, in giving them to either
17 authorities or regional governments, the fact there
18 can only be one classification system would pretty
19 well force a decision in this area by the General Assembly
20 and would serve in itself as a brake upon them from
21 actually administering whatever authorities they set up.

1 They would need to establish a classification
2 system that bears more on the population basis.
3 MR. SYKES: The difficulty with that is
4 that you have got something in here inconsistent
5 between the two types of agencies. If you are going to
6 allow intergovernmental authorities, you may need a
7 two county authority so that it is something that
8 won't fit into your classification system because you
9 need three counties for a class and you have to do it
10 on a different basis and there won't be any limits what
11 you can do with that.
12 MR. BROOKS: As Mr. Clagett would say, this
13 is one of the reasons for this kind of classification
14 system in that it in effect, somewhat directs the
15 size of the area to be within a region or for purposes
16 of a government or an authority. You've got to make
17 it fit.
18 MR. SYKES: Then you are really cutting
19 the flexibility and distrust in the Legislature. I don't
20 know. If you do that, you still have to say that the
21 classification requirement would apply then to subsection

1 (d) as well as to (c) and it would be the same kind of
2 classification system and it would only be one kind of
3 public general law.
4 THE CHAIRMAN: I would be very much concerned
5 about it that regional governments could be created only
6 out of three or more counties.
7 MR. SYKES: I agree it is a problem.
8 MR.MARTINEAU: Particularly when you say
9 of a same class and if it is based upon population, the
10 counties in the class may not be contiguous at all and
11 you would effectively prevent any county function.
12 MR. CLAGETT: You are going right back into
13 the very same area that you had already pulled yourself
14 out of when you were dealing with our first presentation
15 and there you will recall that we had a phrase,which
16 are not soluable through interlocal cooperation,and you
17 couldn't appreciate the definition of that and I
18 argued then that we were trying to put a brake upon the
19 use of this pure and we also struck out from that same
20 original writing,on its own initiative,or on the request
21 of one or more political subdivisions,and we ended up

1 with just exactly what we have got here after we got
2 through revising it at that time so that after the
3 material was stricken, the provision read just as we
4 have got it here.
5 Now let me read it as it was originally.
6 The General Assembly may provide notwithstanding any
7 other provisions of this article for the creation of
8 intergovernmental authorities on its own initiative or
9 on the request of one or more political subdivisions to
10 administer single or multi-purpose functions or services
11 which transcend local boundaries are not soluable
12 through local cooperation.
13 And then it provides for the power to impose
14 and collect revenues and taxes as imposed by the
15 General Assembly about which we have no dispute. Now
16 when you got through revising that language you came
17 up with,and I ask you now to compare it with what you have
18 in front of you, the General Assembly may provide for
19 the creation of intergovernmental authorities to administer
20 single or multi-purpose functions or services which
21 transcend local boundaires, and there follows the rest

1 of the text.

2 MR. MARTINEAU: I submit that the language

3 that we have here is the one that we are going to have

4 to adop notwithstanding Mr. Sykes' fear because I

5 frankly think your earlier language gave no protection

6 whatsoever. If the Legislature found it was an insoluable

7 problem, the court would be stuck with that finding and

8 if they wanted to legislate. As Mr. Sykes fears, they

9 will go ahead and do it.

10 THE CHAIRMAN: It seems to me this is the

11 answer because you have heretofore approved the

12 provisions under which the Legislature has full power

13 over counties, the creation and existence, dissolution,

14 changes the county lines and full power over classifi-

15 cation of counties. Having gone that far, it seems

16 to me that you try to put a block on the power of the

17 Legislature with respect to regions is getting yourself

18 tied into knots and really don't accomplish anything.

19 MR. SYKES: I don't know whether it is right

20 to do it but I am not suggesting any diminution of the

21 Legislature's power to create or structure.

1 THE CHAIRMAN: What you are suggesting is
2 that the Legislature with its power could create a
3 region and thereby get power to pass local legislation
4 and defeat our general prohibition?
5 MR. SYKES: That's right.
6 THE CHAIRMAN: And I say to you conceivably
7 this could happen but I think the probability is
8 very remote and it is a risk we will have to live with.
9 I think the alternative is to tie us into knots. Any
10 further discussion of this section? I think we've got
11 to suspend consideration of this.
12 MR. CLAGETT: Mr. Chairman, may I ask that
13 we have five more minutes and in that five minutes I
14 will confine myself to the time extention. May I have
15 that five minutes?
16 THE CHAIRMAN: Go ahead.
17 MR. CLAGETT: Section 11.03 deals with the
18 structure of county governments and consists of pages
19 19, 20, and 21. I would ask that that entire material
20 be disregarded and in place of it this be substituted.
21 Before I read what this amounts to in 11.03

1 which I am asking you to cast aside, we provide three
2 essential means by which a county can provide for the
3 structure of its government. One would be by the
4 selection of one of several operations drawn by the
5 General Assembly. The other would be through a charter
6 board and the third would be by action of the governing
7 body and whatever means it specifies.
8 Now keeping in mind those three approaches
9 insofar as a county adopting a structure of government,
10 we ask that you provide the one and same thing with the
11 following, or through the following language.
12 The General Assembly shall by law provide
13 for a plan of organization for the government of all
14 noncharter counties of this state which shall become
15 effective for each county on January 1 of the, for the
16 year following the effective date of this constitution,
17 unless prior to that time the governing body of the
18 county or the citizens of the county by petition in a
19 manner which shall be prescribed by law cause to be
20 drafted, submitted to, and have ratified by a majority
21 of the voters of the county voting thereon a plan of

1 organization.

2 Until such time as the county adopts a plan

3 or the General Assembly/plan becomes effective, the existing

4 county government shall have all the rights and powers

5 herein provided. The plan of organization shall be

6 amended by the electorate as provided therein and in

7 the absence of such provision as provided by petition or

8 recommendation of the governing body and approval of

9 the majority of the voters voting thereon.

10 THE CHAIRMAN: You said in the earlier part

11 of that draft by the citizens of the county. I assume

12 that should be voters?

13 MR. CLAGETT: That is what is meant.

14 THE CHAIRMAN: And in the last sentence you

15 said the charter shall be amended. I would take it

16 should be may be amended.

17 MR. CLAGETT: The plan of organization may

18 be amended. Now this language I am indebted to for

19 this approach, I am indebted to Mel Sykes and Dale

20 Adkins and Franklin Burdette and Mrs. Kostritsky and

21 all of us who gathered around last night with Governor

1 Lane and a bottle of skotch and it has the blessing of
2 a noble spirit.
3 The language will be polished, but in the
4 three paragraphs and a half page it takes up what would
5 otherwise be three pages of constitutional right.
6 THE CHAIRMAN: Any objection to that draft
7 from the nonparticipants?
8 MR. SCANLAN: I regard it as a flash or is
9 it flask of genius.
10 MR. CLAGETT: The other two and a half
11 minutes I have left of that five deals with Section 11.04
12 where we make provision for city governments and there
13 we would like to have approval in principle of the
14 county providing for the creation and commanding, merging,
15 et cetera, of cities. This language I would like to
16 have before you in leiu of the language there contained
17 and I am now referring to Page 23 of the draft.
18 DR. JENKINS: Is this the same source?
19 MR. CLAGETT: No. I would like you to
20 turn to Page 4 of the staff memo dated October 24, 1966.
21 Alternative two, I think, does give us the language to

1 carry out the intent of the Committee and I would like
2 to read that alternative and have you consider it in
3 place of the language which appears on Page 23 of the
4 Sixth Report. The county may provide by public local
5 law for the creation of any new city within its boundaries
6 and for methods and procedures of incorporating, changing,
7 merging, and dissolving them and altering their boundaries.
8 No existing municipal corporation shall be dissolved
9 without its consent or the consent of the General
10 Assembly by law.
11 Cities created after the effective date of
12 this Constitution may exercise only those powers which
13 are delegated to them by the counties within which they
14 are located. Cities existing at the time that this
15 Constitution becomes effective may exercise only those
16 few powers delegated to them by the counties within
17 which they are located but they may exercise all of those
18 powers which they formally possessed until those powers
19 are withdrawn by the counties within which they are
20 located with their consent or with the consent of the
21 General Assembly by law.

1 Now I think we can improve and polish on
2 the language but I would like to have approval of the
3 Commission on that basic approach.
4 MR. MARTINEAU: A question.
5 THE CHAIRMAN: Mr. Martineau.
6 MR. MARTINEAU: You don't mean to imply when
7 you say in your first sentence changing, merging, you
8 don't mean to imply just new cities?
9 MR. CLAGETT: Yes. I take care of existing
10 cities in the subparagraph (b).
11 MR. MARTINEAU: That doesn't apply to
12 methods and procedures of changing, merging, and dissolv-
13 ing.
14 MR. CLAGETT: You mean existing cities?
15 MR. MARTINEAU: Yes.
16 MR. CLAGETT: Yes, I think it does because
17 it says that they will continue to exercise those powers
18 which they already have but any new powers can be exercised
19 by them only as delegated.
20 MR. MARTINEAU: They may or may not have the
21 power to dissolve or to change themselves. You are

1 assuming they have all those powers and I don't think
2 that is a correct assumption.
3 MR. BOOKS: Oh, no, the assumption is the
4 powers they don't have would be for the county to give
5 them and those powers as given them by the county would
6 be subject to withdrawal by the county without legis-
7 lative or consent of the cities.
8 THE CHAIRMAN: Might I restate the substance
9 of the proposition as I understand it which I think
10 would embrace Mr. Martineau's principle and not do
11 violence to the one you have indicated. A county may
12 provide by public local law for the creation of any new
13 municipal corporation within its boundaries and for
14 methods of incorporation, merging, dissolving and existing
15 any new municipal corporations and altering their
16 boundaries but no existing municipal corporation shall
17 be dissolved or have any powers presently exercised by
18 it withdrawn without its consent or the consent of the
19 General Assembly by law.
20 MR. CLAGETT: I think that does it.
21 MR. BROOKS: That is similar to his first

1 paragraph.

2 THE CHAIRMAN: Any dissent from the

3 substances of those proposals?

4 MRS. BOTHE: I would just comment that

5 this (b) sounds like the common law of England. I

6 guess the Committee would have a problem finding substitute

7 language but I hate to see the powers that exist at the

8 time of passage of the Constitution incorporated in the

9 new one. I haven't any better language to suggest.

10 THE CHAIRMAN: I don't know whether it is

11 possible but you may perhaps be able to button down to

12 express powers granted to it by act which makes it

13 a whole lot more definite. I don't know. Let us suspend

14 consideration of this report.

15 DR. BURDETTE: Will you note I did dissent

16 from it, Mr. Chairman?

17 THE CHAIRMAN: From which?

18 DR. BURDETTE: The section you just read.

19 I don't have a copy of it but my understanding, the

20 part I am dissenting from is that the charters of existing

21 localities may be changed by count.

1 MR. SCANLAN: I would like to be recorded
2 against that too. That was a little different.
3 THE CHAIRMAN: I said no powers could be
4 withdrawn except with their consent.
5 DR. BURDETTE: Yes, but I thought, what I
6 wanted to dissent from, I am not sure, for example, if
7 the county decided that a town council is going to be a
8 town council of seven and I didn't want to give that
9 to the council.
10 THE CHAIRMAN: I would amend the substance
11 of it then, that the existing charter and the powers
12 exercised should not be amended or withdrawn without
13 its consent.
14 MR. CLAGETT: Mr. Chairman, can I use the
15 other thirty seconds of my five minutes and deal with
16 Section 11.05 intrastate, intergovernmental agreement,
17 Page 24.
18 There we provide that any county, other
19 civil division or municipal corporation may,except to
20 the extent prohibited by general public law, agree with
21 the state or any other county, civil division or municipal

1 corporation for the joint administration for any of
2 their functions and powers and the sharing of costs
3 thereof.
4 THE CHAIRMAN: Any questions? Any comment?
5 I think we will all agree with the comment we made
6 when we started this. This is the most difficult of all
7 the provisions we have to concern ourselves with. We
8 have a number of matters that we simply must act on
9 today. I don't want to treat any of them summarily.
10 I will try to take up each in the order of
11 their urgency. I think the first matter I want to ask
12 you to consider and make a decision about is the
13 question of whether the Commission should or should not
14 make a public statement or take a position with respect
15 to the 16 constitutional amendments which would be on
16 the ballot next month or any of them. I point out to
17 you that this is not a question that is easy to resolve.
18 At first blush it is seemingly the answer
19 to say well, it deals with a matter that we are working
20 on and we should express our views. Another opposite
21 view is that the Commission is preparing for a convention

1 and is not going to review the 16 proposed amendments
2 and, therefore, should not express any opinion.
3 Actually neither of those situations quite
4 answers the question. It seems to me that the problem is
5 this.
6 Almost all and I think perhaps all of the
7 16 amendments deal with matters that are touched upon
8 in one way or the other by actions which this Commission
9 has already taken. The 16 amendments will be acted
10 upon at the next month's election and, of course,
11 will be acted upon before the constitutional convention
12 meets.
13 If an amendment is defeated and that amendment
14 embodies not necessarily the same detail but the same
15 principle as maybe recommended in the draft of the
16 Constitution, we submit the argument could very well
17 be made and I have no doubt it would be made in the
18 convention that the convention should not adopt this
19 principle because it has so recently been rejected by
20 the people.
21 For instance, one of the constitutional

1 amendments proposed deals with the creation of an inter-
2 mediate appellate court. If that should not be
3 adopted, the argument could very well be made that the
4 judiciary article which we propose and which proposes
5 an intermediate appellate court should be amended so
6 as not to provide for an intermediate appellate court
7 because the people have so recently rejected it. On
8 the other hand it seems to me that an almost similar
9 argument can be made if a constitutional amendment is
10 approved and if it varies in detail from what we
11 propose but touches on the same area.
12 The argument might then be the people have
13 so recently approved this that the convention ought not
14 now change it. It seems to me we are in a position
15 therefore to try to suggest that the amendment should
16 be adopted or should not be adopted. On balance it seems
17 to me that we perhaps should at least point out in a
18 public statement the extent to which an amendment is
19 either consistent or not consistent with action which
20 we contemplate. Mr. Miller.
21 MR. MILLER: Mr. Chairman, wouldn't we be

1 hunting for trouble? Aren't we in a position to say that
2 regardless of what the people of Maryland decided with
3 respect to amendments to the present Constitution that
4 we are offering a new start and we are making it as
5 interlocking and compact and so forth as we can and
6 we are regardless of what they do in amending an
7 ancient document, it seems to me we don't have to say
8 what they did to that document, because all of the
9 various provisions in our proposed Constitution will be
10 interlocking and a principle might be there for the
11 present Constitution that wouldn't apply to our new
12 draft and I don't think we have to get into that.
13 THE CHAIRMAN: Mr. Sykes.
14 MR. SYKES: I would suggest that the state-
15 ment that ought to be made by the Commission and the
16 statement ought to be made is a statement that we take
17 no position with respect to the individual constitutional
18 amendments for the reasons suggested by Congressman
19 Miller, that if these pass, they will pass in a different
20 form of detail in any case and unless we say right now
21 that we regard these amendments as additions to an old

1 Constitution and as standing on the basis that the old
2 Constitution is still the instrument of government and
3 that it is an entirely different document and different
4 theory and different job from the one we have got, we
5 are going to get hung up in the convention, one way or
6 the other. It will be very hard to endorse a provision
7 in substance but not in form and say we reserve the
8 right to change it because once the Legislature, the
9 public has spoken and we have indicated that we set some
10 store by what they say insofar as our job is concerned,
11 we are in trouble.
12 MRS. BOTHE: We have two different problems
13 here. Some of these amendments,most of them involve
14 the mess the old Constitution is in and we are advertising
15 for a new Constitution. Things like abolishing the
16 Commissioner of the Land Office, which the Committee on
17 Miscellaneous Provisions mentions in its report. On
18 the other hand, the intermediate court of appeals itself
19 is built into our proposal which the Committee seeks
20 to abolish, not in the form it will appear on the
21 amendment, but the principle involved is an integral part

1 of our judiciary article and one if defeated at the
2 pools would have some devastating effect on the recommen-
3 dations the Commission has already passed on. I don't
4 know that it is wise. I don't think the proposal is
5 in any danger but I don't know it is wise for us to ignore
6 propositions of this kind which we do intend to perpetuate
7 in the new Constitution. I think it will be distinguished
8 from the housekeeping ones that are necessitated by
9 the condition of the old Constitution.
10 DR. BARD: I think we should make it
11 clear, Mr. Chairman, that these items that are being
12 dealt with are those that have been given consideration
13 by this body but that ours is a unitary approach and
14 not a segmented one and that within this unitary approach
15 we have dealt with these problems. It would occur to
16 me that this is the way we should make known our
17 position. I think too, however, that as individuals,
18 not as members of this Commission, we might feel free
19 to hold a position in regard to one or more of the
20 items but I do think it would be wrong if we came out,
21 let us say, with a listing of where we stand or a

1 kind of credo in respect to what has taken place in
2 regard to constitutional amendments.
3 Our main task is that of the unitary approach.
4 THE CHAIRMAN: Mr. Clagett.
5 MR. CLAGETT: It is entirely possible
6 that all of our good work can be ignored by the
7 convention and we will still continue to go forward
8 under the present Constitution and with the amendments
9 thereto that are coming up for vote on November 8.
10 I think that a statement could be made which could
11 reconcile the purposes and objectives of this Commission
12 and not in any way detract from the passage by the
13 electroate of amendments with which we agree in principle
14 if not in exact substance and form of approach that we
15 should not take any action or make any statement which
16 would tend to cause people not to vote upon those
17 amendments by reason of thinking that they are going
18 to be taken care of by this Commission, and, therefore,
19 that they don't have to worry about the problem. So I
20 do feel strongly that we should go ahead and make a
21 statement but make a statement reconciling the purpose

1 of the Commission and not detract from the passage of
2 the particular amendments.
3 THE CHAIRMAN: Any further discussion?
4 Mr. Brooks.
5 MR. BROOKS: As the Chairman mentioned, the
6 question isn't really very clear-cut, black and white.
7 Whichever the position we take, there are some recommen-
8 dations such as the intermediate court of appeals and,
9 for instance, there is a proposal that the General
10 Assembly be permitted to establish some salary. Precisely
11 the same recommendation adopted by this Commission
12 which would be very significant from the standpoint if
13 they were to be defeated, the general reaction at the
14 convention would be that I think Mr. Case expressed
15 yesterday that having so recently been defeated and he
16 was arguing this in regard to something else, the
17 general tendency would be to say that the people
18 expressed their thought on it. On the other hand, it
19 is rather difficult to support such without also opposing
20 some that do not actually accomplish any betterment of
21 the present document.

1 For insta nce, there are several that make
2 special exception of certain counties that are nothing
3 but special legislation that absolutely flout every thing
4 that has been discussed here in the last 24 hours about
5 special lesiglation. That in themselves would have to
6 be considered an evil as far as the Constitution is
7 concerned and that they exclude a particular county
8 from being covered by a constitutional provision.
9 There are a number of different things where you might
10 say there is another class of these amendments which
11 really don't make any difference one way or the other
12 what happens to them insofar as they probably would not
13 affect the new draft because the type of material dis-
14 cussed would not be considered in a new Constitution.
15 DR. JENKINS: I think the Commission should
16 remain silent on this question.
17 MR. SCANLAN: I agree with Dr. Jenkins.
18 We remain silent when a more pressing and important
19 issue is before the voters, namely, the referendum on
20 the convention itself and we wisely stayed in the
21 background and let an independent agency, an independent

1 group speak in effect for us, I think we should remain
2 quiet. I am afraid that rightly or wrongly some will
3 think we are exceeding our authority and presenting our-
4 selves as Constitutional seers and it could only lead
5 to resentment and I don't think the political impact of
6 this group is very significant on these issues anyway.
7 MR. MARTINEAU: Mr. Chairman, I think we
8 ought to make a statement that only one designed to
9 protect our proposals from any action taken by the
10 electorate which would be that we would merely explain
11 some of the amendments are consistent with our proposals, so
12 we are inconsistent but that really in the longrun none
13 of them should have any bearing on the convention because
14 everything will be considered in a completely different
15 frame of reference.
16 DR. BURDETTE: I prefer to remain silent,
17 under the general principle that I prefer to reply
18 even after we finish our work. I don't want to
19 associate myself with any type of nonpartisan political
20 organization by public appointment. I am putting it
21 another way, that as a citizen I might campaign for a

1 new Constitution after it had been adopted by this
2 group, but I very much doubt if we should turn ourselves
3 into an organization to espouse a cause as an organiza-
4 tion, a Commission rather.
5 DR. JENKINS: Are you prepared to receive
6 a motion?
7 THE CHAIRMAN: Yes. Let me make this obser-
8 vation before you propose a motion. The only reason I
9 do it is because I might forget it. Mr. Martineau made
10 a comment that would bother me. I am afraid that if
11 we were to make a statement that some of these amendments
12 were consistent with what we were doing and some were
13 not and it really didn't make any difference to us
14 because we are dealing with a document that might be
15 the kiss of death on all of them.
16 It might create a feeling of people,
17 well, there is no use bothering about that.
18 MR. MARTINEAU: I didn't mean that. Certainly
19 we don't want to say that these matters shouldn't be
20 voted on intelligently because the convention after all
21 may not even adopt a new Constitution but I think we

1 ought to in protecting our work say that the action is
2 taken by the electorate insofar as the convention is
3 concerned should not be considered important.
4 THE CHAIRMAN: That is what troubles me, the
5 idea that that is going to make a lot of people feel
6 their vote on this is wholly wasted and unnecessary.
7 People don't want to waste a vote and worry a brain
8 with this.
9 DR. JENKINS: I move that the Commission not
10 take any position on the amendments to be voted on at
11 the November 8 election.
12 MR. SYKES: Second it.
13 THE CHAIRMAN: Any further discussion?
14 DR. BARD: I would like to have us issue
15 a statement along the lines of making it clear that we
16 believe it is significant to have the voice of the
17 public on this occasion as on other occasions without
18 in any sense elaborating as to the items on the ballot
19 and then indicate that our approach has been unitary
20 in its view and that we find the voice of the public valuable,
21 we believe, in connection with the convention, just that

1 kind of a statement.

2 MR. BURDETTE: All but your last paragraph.

3 THE CHAIRMAN: That kind of a statement

4 would invite just the kind of difficulty.

5 MR. MILLER: You want to offer an amendment?

6 DR. BARD: I am not offering an amendment

7 to this but I take it for granted that the way the

8 motion was made this is possible because we are not

9 taking a position.

10 DR. JENKINS: No, I say remain silent.

11 DR. BARD: Oh, you said silent.

12 MR. CLAGETT: Mr. Chairman, are groups

13 like the Junior League and the League of Women Voters

14 and those who are active interested groups going to

15 allow us to remain silent?

16 THE CHAIRMAN: Yes, I think they will. Let

17 me ask Dr. Jenkins this and make a statement in connec-

18 tion with it. I take it that you would not intend your

19 motion to prevent the Chairman of the Commission or any

20 members of the Commission giving background information,

21 if I can use that term, to interested groups such as

1 I did with the editorial, one of the editors on the
2 Sun, not taking a position but indicating the extent
3 to which these amendments may or may not be consistent
4 with what we have done.
5 DR. JENKINS: No, my motion would not
6 exclude that so long as it did not purport to be the
7 view of the Commission.
8 (Discussion off the record.)
9 THE CHAIRMAN: On the record again.
10 MR. CLAGETT: I think in the light of the
11 motion that has been made not excluding comparative
12 comment would indicate the advisability of the Commission
13 as a whole not making any statement and consequently,
14 I am going to reverse my position and go along with
15 the motion but with the understanding that individual
16 members of the Commission and the Chairman of the
17 Commission will be free to make comment by way of
18 comparison with the work of this Commission and the
19 effect of the amendments.
20 THE CHAIRMAN: Yes, this will not be, if I
21 understand the motion, any comment for publication on
all or any of the amendments.

1 MR. CLAGETT: Exactly.

2 DR. BURDETTE: As a Commission.

3 THE CHAIRMAN: As a Commission or I would say

4 as a member of the Commission.

5 DR. BURDETTE: Yes, in the name of the

6 Commission.

7 THE CHAIRMAN: Yes. Any further discussion?

8 All right, then you are ready for the question. The

9 question arises on the motion that the, with respect

10 to the 16 proposed constitutional amendments which

11 will be on the ballot next month, the Commission and

12 its members will not, as a Commission or officially

13 as members of the Commission, take any position at

14 all and will remain silent. All those in favor signify

15 by saying aye. Contrary? No. The ayes have it.

16 Now I think perhaps the next matter that we

17 should clear up is the matter of the extraordinary

18 votes in the Legislature.

19 You have a memo?

20 DR. JENKINS: Mr. Chairman, might I interrupt

21 to say I have to leave shortly. Are you going to

1 announce any further meetings or any further business?

2 THE CHAIRMAN: No, I think we will have to

3 do as I indicated at the beginning, ask you to keep

4 the date of November 21, ask you not to swear at me

5 when you get a call.

6 Now each of you, I think, has a copy of

7 a memo from Mrs. Wiegand to me, dated October 19. And

8 on the upper right corner it says extraordinary vote

9 of the Legislature provisions in proposed articles of

10 new Constitution. Now these, I think, represent the

11 complete list. Section 8, the extraordinary vote for

12 what was formerly called the emergency law, that is

13 a law that is subjected to a referendum would take

14 effect notwithstanding was three-fifths. It is not

15 noted on the memo. Three-fifths was the vote required.

16 DR. WINSLOW: Does this then provide that

17 under the present agreement there is no such thing

18 as a suspension of a law on the basis of a petition.

19 Is that what the decision was?

20 THE CHAIRMAN: No, the decision was that

21 the law will not be suspended in the event of a referendum

1 petition if it was passed originally by a three-fifths
2 vote but if it was passed by less than the three-fifths
3 vote, it will be suspended by the filing of a petition.
4 MR. GENTRY: But only if the petition is
5 filed before the law goes into effect.
6 THE CHAIRMAN: Now the next one is under
7 the executive department, in case of a tie vote the
8 Governor is selected among the candidates having
9 received the tie by a majority vote. Declaration that
10 the Governor is disabled is a two-thirds vote. Passing
11 over a veto, three-fifths vote. Now the next section,
12 next comment is really not an extraordinary vote.
13 Mr. Power has just flagged for us that the, that this
14 deals with reorganization of the executive department
15 and that we have provided that the General Assembly
16 has 60 days to consider executive order and they become
17 effective unless disapproved. This is by an ordinary
18 majority vote. Nothing in the judiciary article.
19 In the extension of credit, two-thirds vote. This is
20 not to borrow money you recall but to lend credit, the
21 last sentence of that Section 34, this was an amendment

1 added by the Commission.

2 MR. MILLER: A question, Mr. Chairman.

3 Didn't we in considering practically all of the later

4 extraordinary votes just arbitrarily pick one or the

5 other, wasn't it announced that our progress would,

6 that we probably would have one uniform figure?

7 THE CHAIRMAN: Yes, and that is the purpose

8 of this discussion to decide whether we want it

9 uniform and if not, what vote we want in each case.

10 These actions heretofore were only

11 tentative.

12 MR. MILLER: I would like to move at this

13 point that we make it uniform regardless of whether

14 it is two-thirds or three-fifths.

15 THE CHAIRMAN: Wait a minute and let me go

16 through and then I will recognize you. Legislative

17 Department is a two-thirds devote to keep the

18 Legislature in Session an extra 30 days, three-fifths

19 vote not two-thirds for the Legislature to call itself

20 into session.

21 DR. BARD: We thought it was two-thirds when

1 we left last night.

2 MR. MILLER: Without any argument as to

3 whatever the policy is.

4 THE CHAIRMAN: Subpoena power, two-thirds

5 vote, expulsion of a member, two-thirds vote, and

6 removal after impeachment by two-thirds vote. Now,

7 Mr. Miller, the reason I wanted to wait until we got

8 to the end before this question of uniform vote, uniform

9 number for extraordinary votes was that you might want

10 to make an exception in the case of explusion of a

11 member or impeachment which are truly extraordinary

12 situations. Dr. Winslow.

13 DR. WINSLOW: Might I suggest there is not

14 included here because I think the Commission has not

15 yet acted on it, an extraordinary vote for the proposed

16 amendment to the Constitution. I imagine that will come

17 along.

18 THE CHAIRMAN: That's true, the Commission

19 indicated the extraordinary vote should have the same

20 vote.

21 MR. SCANLAN: We had the instance this

1 morning of an extraordinary vote required on the
2 local subdivision order.
3 MR. MILLER: That was voted down.
4 MR. CLAGETT: That was the creation of
5 counties.
6 THE CHAIRMAN: Then we better add that. We
7 didn't put a number. We particularly said extraordinary
8 votes.
9 MR. CLAGETT: That's right. Creation of
10 counties and amendments.
11 THE CHAIRMAN: Creation of counties and
12 amendments. Now, Mr. Miller.
13 MR. MILLER: I move that we make them
14 all the same for simplicity regardless of whether
15 it is two-thirds or three-fifths.
16 THE CHAIRMAN: All without exception.
17 MR. MILLER: Yes.
18 THE CHAIRMAN: Is there a second?
19 MR. HOFF: I second.
20 THE CHAIRMAN: He is saying uniformity and
21 then later decide what it is.

1 MR. HARGROVE: I will second.

2 MR. MARTINEAU: When is it proper to make

3 an amendment to that?

4 MR. GENTRY: That is what I want to make.

5 THE CHAIRMAN: Wait a second and let Mr.

6 Miller speak to his motion.

7 MR. MILLER: I really made my speech. I

8 think it is more simple not to have to look up in the

9 book every time you want to find out how many votes

10 are necessary and it is a difference between 10/15ths

11 and 9/15ths and I think we can well afford to make

12 them all the same whichever way the Commission wants.

13 THE CHAIRMAN: I will recognize to move the

14 amendment.

15 MR. GENTRY: I would like to move the

16 motion be amended to make it two-thirds vote for every-

17 thing across the board.

18 THE CHAIRMAN: You will accept the amendment,

19 Mr. Miller?

20 MR. MILLER: I think we ought to decide the

21 first question first. I will accept the amendment but

1 if it fails --

2 THE CHAIRMAN: Who will second it?

3 MR. CLAGETT: I will second it.

4 THE CHAIRMAN: Then the motion now before

5 you is to provide that all extraordinary votes be two-

6 thirds. Mr. Martineau.

7 MR. MARTINEAU: I would like to draw a

8 distinction between those votes which remove someone

9 from office or has the effect of that; in other words,

10 I believe that there should be a higher vote for

11 declaring the governor unable to perform his duties,

12 expelling a member.

13 THE CHAIRMAN: Higher than two-thirds.

14 MR. MARTINEAU: No, higher than the three-

15 fifths.

16 THE CHAIRMAN: The motion is now two-thirds.

17 MR. HOFF: The motion is now two-thirds.

18 MR. MARTINEAU: Well, I want a compromise

19 between the two. I want everything three-fifths

20 except two-thirds for removing a person from office,

21 impeaching, and so forth.

1 DR. JENKINS: I don't think there is any
2 particular virtue in consistency in this instance.
3 Mr. Brooks pointed out this morning that if some members
4 are not present and some members seats are not
5 filled that three-fifths does provide a substantial
6 measure of protection. I would favor three-fifths for
7 everything except the removal and impeachment procedures
8 which would be two-thirds. I will vote against this
9 motion.
10 THE CHAIRMAN: Mr. Miller, I take it when
11 you say your motion is for a two-thirds vote we are
12 talking as we have provided throughout on two-thirds
13 of the elected members not two-thirds of those present.
14 MR. MILLER: Well, of course, I think it
15 should be members present but we killed that. We are
16 now demanding a constitutional majority,as I understand,
17 for even the simplest bills and I am only interested
18 in the fact that it doesn't seem to me it doesn't have
19 much practical difference whether it is 9/15ths or
20 10/15ths but it would simplify things if we had the
21 same percentage all the way through.

1 MR. MITCHELL: With all due respect, I am
2 going to disagree with Mr. Miller and I think Mr.
3 Martineau states my position. I think that, for
4 example, the provision that we considered this morning
5 that provides for the relocation of county lines, my
6 feeling that in the future, 15 or 20 years from now,
7 that is going to be a very, very important provision and
8 to require a two-thirds vote of those present seems
9 to me to really nullify it completely,and I think
10 that that should be, for example, that should be smaller
11 than the idea of removing or voting to remove somebody
12 from office.
13 I cite that by way of example, but I believe
14 a distinction should be drawn because some of them are
15 more important than others as far as flexibility is
16 concerned.
17 THE CHAIRMAN: Any further discussion?
18 Mr. Sykes.
19 MR. SYKES: I also think two-thirds is
20 too restrictive if there is to be uniformity and there
21 probably ought to be uniformity because there are very

1 different policies involved in these. The only interest
2 that has been stated so far in uniformity is that you
3 should be able to know without looking up what vote
4 you should have. Well, you have to look it up in
5 order to determine whether an extraordinary vote is
6 needed in the first place and I don't think there is
7 any real value to be served by uniformity.
8 THE CHAIRMAN: Any further discussion?
9 MRS. FREEDLANDER: Mr. Chairman, it is my
10 recollection that, in the course of putting two-thirds
11 or three-fifths, all along we kept saying we will make
12 it the same when we get to the end, let's just put
13 this down or put that down. So I thought we had
14 already decided on a concept of uniformity.
15 THE CHAIRMAN: No, I don't think so. The
16 question was put earlier in the course of our decisions
17 as to whether we should establish that principle, but
18 we decided not to and to wait until we reviewed the
19 whole thing at the end.
20 DR. BARD: I merely want to offer some
21 figures because it really is not an easy question to

1 deal with. When you talk about two-thirds of the
2 House of Delegates, you are talking about 96 members.
3 When you talk about three-fifths, you are talking about
4 84 members. And there is a big difference between the
5 two and when you are talking about the entire body.
6 I wish there were some way it could be
7 uniform but we ought to recognize that when we moved
8 away from the Legislative Department Committee's
9 recommendation, namely, that it be a percentage of
10 those in attendance that we were in a sense taking
11 away power from the Legislature and I think we will
12 have to be a little bit careful that we don't take
13 even more away if this figure is too high, because you
14 don't generally get more than about 115 there present,
15 so it is really many more than two-thirds.
16 THE CHAIRMAN: Any further discussion?
17 Are you ready for the question? The question arises
18 on the motion to provide that all extraordinary votes
19 shall be two-thirds of the members selected to each
20 house of the Legislature except in the case of
21 constitutional amendments in which case it would be two-

1 thirds of the voters voting thereon. A vote aye is
2 a vote in favor.
3 MR. MARTINEAU: Wait a minute.
4 MRS. BOTHE: I didn't understand the
5 reference to constitutional amendments.
6 THE CHAIRMAN: I am sorry. I stated it
7 quite incorrectly. It would be the same thing, two-
8 thirds, proposing constitutional amendments, two-thirds
9 of the elected members of each house for constitutional
10 amendments as well as everthing else. A vote aye is
11 a vote in favor of a uniform two-thirds requirement.
12 All in favor, please signify by a show of hands.
13 Contrary? The motion is carried nine to seven.
14 MR. CLAGETT: School children will have less
15 work.
16 MR. SCANLAN: And the Legislature will have
17 less power. The way that came to a vote, there might
18 have been some in favor of the principle of uniformity
19 and others favor the principle of two-thirds that
20 produced the small majority. I suppose it is impossible
21 to go back again and see how many, is it too late to

1 move to amend the motion by substituting the phrase
2 three-fifths for the phrase two-thirds?
3 MR. CLAGETT: I would second the motion.
4 DR. BARD: I second it too.
5 THE CHAIRMAN: If we are going to follow
6 our procedure, I think you would have to move to
7 reconsider, and if anyone seconded the reconsideration --
8 MR. MILLER: I made the original motion and
9 will move to reconsider if that would help it because
10 I would rather have it three-fifths across the board,
11 but I still think the principle of uniformity is
12 important.
13 MR. MARTINEAU: Can we vote on the principle
14 of uniformity?
15 MR. SCANLAN: I would move to reconsider
16 that aspect of it that -- I move that the Commission
17 move to reconsider its previous vote.
18 MR. MILLER: I second it.
19 THE CHAIRMAN: This is submitted without
20 debate.
21 MR. MILLER: I can make the motion.

1 THE CHAIRMAN: All those in favor of
2 reconsidering it, signify by saying aye. Contrary,
3 no. I am in doubt. All those in favor, signify by a
4 show of hands. Contrary? The reconsideration is
5 eleven to fifteen. We are back now on the motion.
6 The motion is that the extraordinary vote
7 be two-thirds of the members elected.
8 DR. BARD: It is three-fifths.
9 THE CHAIRMAN: The motion that is before the
10 group is two-thirds. Now it is up for amendment.
11 MR. SCANLAN: I would like to amend the
12 pending motion by substituting the phrase three-fifths
13 for the phrase two-thirds.
14 DR. BARD: I second.
15 THE CHAIRMAN: Do you accept the amendment,
16 Mr. Miller?
17 MR. MILLER: I accept it.
18 MR. HARGROVE: I accept it.
19 THE CHAIRMAN: The motion is that the
20 uniform vote be three-fifths extraordinary vote. Any
21 further amendment?

1 MR. MARTINEAU: You are voting on the
2 assumption. I wish we would vote on the assumption
3 first.
4 THE CHAIRMAN: I am submitting a motion.
5 MR. MARTINEAU: That the uniform be and I
6 wish we would vote first on whether it is to be uniform.
7 THE CHAIRMAN: I can't control the motion.
8 DR. BARD: Let's get the motion out first.
9 MR. MITCHELL: Is this the motion on the
10 uniformity itself?
11 MR. CLAGETT: No, this is the motion on
12 three-fifths.
13 THE CHAIRMAN: The first motion that Mr.
14 Miller made was that without reference to numbers the
15 extraordinary votes be uniform. Somebody, and I have
16 forgotten who,suggested an amendment to make it two-
17 thirds and he accepted the amendment. He has now
18 accepted a further amendment to make it three-fifths.
19 The motion that he has proposed as amended now is that
20 the extraordinary vote in all cases be three-fifths of
21 the members elected.

1 MR. MARTINEAU: I would like to amend that.

2 THE CHAIRMAN: The action was to be taken

3 on a previous motion. Mr. Martineau.

4 MR. MARTINEAU: I would like to move that

5 the motion be amended that with respect to those votes

6 declaring the Governor unable to carry out the duties,

7 expelling a member of the House, and removing a person

8 who has been impeached, that the vote be two-thirds.

9 MR. MITCHELL: I will second.

10 MR. SYKES: Can I make a suggestion? I

11 would like to ask unanimous consent to suspend all

12 rules and to cut the Gordian knot by asking the consent

13 of the body to present two questions. First are we

14 to have a uniform number and if it is agreed that we

15 should have a uniform number, then take a vote, all

16 those favoring three-fifths, all those favoring two-

17 thirds. It seems to me otherwise we are going to

18 be here a long time.

19 MR. JENKINS: I will second that if you add

20 without debate.

21 MR. SYKES: Yes. We have had the debate.

1 THE CHAIRMAN: This takes us right back
2 to Mr. Miller's original motion. But what is your
3 pleasure?
4 MRS. BOTHE: Let's do it.
5 THE CHAIRMAN: Any objection?
6 MR. MILLER: Unanimous consent.
7 THE CHAIRMAN: The first question arises on
8 the question of whether the extraordinary vote
9 shall be uniform, that is, the same number required in
10 all cases. A vote aye is a vote in favor of uniformity
11 in all cases. A vote no is a vote against
12 uniformity. Are you ready for the question? All those
13 in favor of uniformity, please signify by a show of hands.
14 Those opposed. The motion carries, nine to eight.
15 MRS. BOTHE: I move that the vote be by
16 three-fifths.
17 MRS. FREEDLANDER: Second the motion.
18 THE CHAIRMAN: Any further discussion?
19 DR. BARD: Question.
20 THE CHAIRMAN: Did you want to say something,
21 Mr.Gentry?

1 MR. GENTRY: Just to save another motion,
2 if you are going to vote no, it means two-thirds.
3 THE CHAIRMAN: A vote aye is in favor of
4 a three-fifths vote in all cases. I would assume a vote
5 no is opposition to three-fifths and, hence, that you
6 favor two-thirds. All those in favor of three-fifths,
7 please signify by a show of hands. Contrary? Twelve
8 to five. Is there any further discussion of the
9 question of extraordinary votes?
10 MR. GENTRY: No.
11 MR. CLAGETT: What was the vote on uniformity,
12 nine to eight and twelve to five?
13 THE CHAIRMAN: Yes. Let's move to a
14 consideration of the Sixth Report of the Committee on
15 Judiciary.
16 MR. MARTINEAU: Just as a matter of intro-
17 duction, I would like to say this is not the Sixth
18 Report of the Committee on the Judiciary because the
19 Committee didn't see it before it was sent out as the
20 Sixth Report. I haven't heard any disclaimers from the
21 Committee, so maybe it now has become the report of the

1 Committee but it wasn't originally. The reporter and
2 I have redrafted this to try to suit the action taken
3 at the last meeting of the Commission , and we didn't
4 have time to submit it to the members of the Committee.
5 I would like to run through very quickly
6 and point out the changes from the Fifth Report.
7 MR. CLAGETT: I might say as we each
8 preface our reports with the same remark, that we have
9 just looked at it, we do not mean to cast any reflection
10 upon the hard work and efficiency of the executive
11 director because I went by his office on Friday afternoon,
12 and I saw the mounds of material there and I saw this
13 active little colored boy running from one end to the
14 other,grabbing a sheet here and grabbing a sheet there
15 and punching them together. I was very much impressed
16 by the hard work being done.
17 MRS. FREEDLANDER: Hear, hear.
18 MR. MARTINEAU: May I begin?
19 THE CHAIRMAN: Yes, go ahead.
20 MR. MARTINEAU: The first change is one that
21 actually isn't indicated in here,but it was missed in

1 reprinting this. On Page 2, Section 3(b), referring
2 to the appellate court in the second line, the second
3 word from the end, the word associate should not be
4 in there, it should be no fewer than five judges.
5 MR. CLAGETT: Where is this?
6 MR. MARTINEAU: Page 2, Section 3(b), strike
7 the word associates. The first change indicated here
8 is on Page 3 to be in Section 4(b). In the second
9 line of (b), the word who has been changed to which.
10 4(b) on Page 3, composition, the Superior Court shall
11 be composed of the number of judges by law, which shall
12 be rather than who shall be.
13 MR. BROOKS: Changes since you received the
14 last draft of this are double underscored. Otherwise,
15 their similarities are the same.
16 THE CHAIRMAN: Or stricken out.
17 MR. MARTINEAU: The deletions have a line
18 drawn through the middle. The additions have a double
19 underscore. The next change is also on Page 3, Section
20 5(b). You can see the line there drawn out. This
21 was taken out by unanimous consent, referring to the

1 division, there shall be a division of the District
2 Court for each district.
3 I am really despondent that this is coming
4 out, since we spent two months finding out what this
5 meant.
6 THE CHAIRMAN: I have a question about
7 (c) even because there has been no change because in
8 reading it over again, I am not sure that the last
9 sentence is clear on what I understand is the intent of
10 the Committee and that is the Commissioners shall only
11 have thepower of arrest warrants and to determine in
12 what amount of bail is required.
13 MR. MARTINEAU: This is what I intended.
14 Frankly, a question that was raised yesterday as to
15 whether these should be the only powers that they may
16 have, the Committee has never considered that, so I
17 think we will have to go along at this point that that
18 is what they may do.
19 THE CHAIRMAN: I thought this had been
20 discussed. I was going to suggest to clarify it you could
21 add at the end: But shall have no authority or jurisdiction.

1 MR. SYKES: Will the judges raise the
2 question, what about the power to approve bail? If
3 you make it too restrictive, he won't even be able to
4 grant bail.
5 MR. MILLER: It wouldn't in accordance
6 with rule solve any problem.
7 MR. SYKES: I think it would.
8 THE CHAIRMAN: I think the discussion that
9 I recall hearing -- and maybe I am thinking of a
10 different place where the discussion was -- was that
11 the Commissioners were not intended in any sense to
12 be assistant judges, and they were not to be given
13 the authority to have preliminary hearings, that this
14 was still a judicial function.
15 MR. MARTINEAU: That is correct.
16 THE CHAIRMAN: And, therefore, this statement
17 that the Commissioners may issue arrest warrants and
18 determine whether and what amount of bail is required
19 is intended as a complete statement of their jursidiction.
20 I think you could without too much difficulty get a phrase
21 that would give them all authority over the issuance or

1 nonissuance of arrest warrants and over the determination
2 of whether bail was required, a release on bail or
3 approval on bail or whatever the language is.
4 It seems to me it ought to be made clear,
5 since this was our intent, that the Commissioners were
6 not to be committing Magistrates in any sense.
7 MR. CLAGETT: I move we add the phrase: and
8 shall have no other authority.
9 THE CHAIRMAN: Would we, instead of that,
10 ask the Committee to draft appropriate language to carry
11 this into effect?
12 MR. MARTINEAU: I think that can be done
13 more simply, so we will undertake to do that.
14 THE CHAIRMAN: Go ahead, Mr. Martineau.
15 MR. MARTINEAU: The next change is on Page 5,
16 Section 8, the fourth line from the bottom, the word
17 types is changed to classes.
18 The next change is below that in Section 9(a),
19 the word preferred has been changed to adopted. 9(a)
20 was adopted by the Commission rather than preferred by
21 it.

1 MRS.FREEDLANDER: May I say for the
2 sake of our record that we put an X through the other
3 alternates.
4 THE CHAIRMAN: No, they will appear in
5 the report as alternates.
6 MR. MARTINEAU: Next change is Section 12,
7 Page 10.
8 THE CHAIRMAN: Again I have to back up,
9 if you will, Page 8, a change was made in the Committee's
10 draft at someone's suggestion to change the phrase
11 the office of judge to a judicial office. I think
12 the reason for it was because we had both justices and
13 judges.
14 MR. MARTINEAU: To be consistent, which 9(a)
15 says to be eligible for nomination and appointment to
16 judicial office and the change was made.
17 THE CHAIRMAN: It troubles me because I am
18 not at all sure that a Commissioner or Master doesn't
19 hold a judicial office, and we certainly don't mean
20 these provisions to apply to anyone except judges.
21 MR. MARTINEAU: That's correct. We went

1 through this. We originally had the office of justice
2 or judge, and we changed it to judicial office.
3 THE CHAIRMAN: But not all the way through
4 because we still use the term in a few places at the
5 end, for instance, retirement, Section 11, each judge
6 shall retire -- I suggest that this could create an
7 ambiguity because I am not certain that a master is not
8 the holder of a judicial office.
9 MR. MARTINEAU: My preference would be, to
10 avoid any confusion, to consistently use the word
11 judge throughout, that there would not be this
12 confusion.
13 DR. WINSLOW: But you cannot say a vacancy
14 in a judge, so what you will have to say is a vacancy
15 in the judgeship.
16 THE CHAIRMAN: You can say the office of
17 judge, which they have had before.
18 DR. WINSLOW: Is the term office of judge
19 any more restrictive than a judicial office?
20 THE CHAIRMAN: I think so.
21 MR. MARTINEAU: I don't know that it is.

1 There would be less difficulty with it.

2 MR.SYKES: How about a vacancy on the

3 court?

4 THE CHAIRMAN: I am not sure of that.

5 MRS. BOTHE: I was going to bring up a

6 different subject.

7 THE CHAIRMAN: Can we leave it to the

8 Committee to remove the doubt?

9 MR. MARTINEAU: Yes.

10 MRS. BOTHE: I want to back up a little

11 further, because since, on Page 6, the Commission, I

12 suppose everyone recalls, made the amendment, which is

13 underlined on Page 6, about a person to be eligible could

14 either be the person who practiced law in or was a

15 resident of a particular area.

16 Several lawyers have pointed out to me that

17 the requirement on Page 30, the Superior Court and

18 District Court have at least one judge, there be at

19 least one resident judge in each of those two cases,

20 that might create some confusion now that we have pro-

21 vided that a judge could in some instances not live in

1 district or area from which he was appointed.

2 MR. MARTINEAU: I believe we discussed

3 this, and the net result of all the provisions is that

4 if the Superior Court judge is the only judge for a

5 particular county,he must, if he doesn't live in it when

6 he is appointed, he must live in it after he is appointed.

7 THE CHAIRMAN: The Commission discussed

8 this, and the distinction was pointed out as one

9 between the residence requirement of a person eligible

10 to be appointed judge and a requirement after he was

11 appointed judge.

12 MRS. BOTHE: Apparently the intent in having

13 a judge is not to have him resident but to have him

14 available in the court house. I gather that no one is

15 particularly interested in where he lays his head down.

16 MR. MARTINEAU: You have got to be able to

17 get him when his head is on his pillow.

18 MRS. BOTHE: If his head is on his pillow

19 in Baltimore County, it is no more difficult to get him.

20 MR. MARTINEAU: It may or may not be.

21 He may be just a few minutes from the Pennsylvania line.

1 THE CHAIRMAN: We are not getting a thing
2 in the record, I am sure, by this. This was discussed
3 thoroughly before, and there were a number who pointed
4 out that it was highly desirable, entirely apart from
5 the question of availability of the judge, to have a
6 person of the rank of judge of the Superior Court in
7 each county.
8 Some had referred to it as a matter of sub-
9 stantial assistance in keeping the peace. This, in any
10 event, was discussed.
11 MR. CLAGETT: There was a remark down
12 here, Your Honor, that having a Judge available, even
13 upon his pillow, keeps him very circumspect.
14 MR. SYKES: Mr. Chairman, can I make one
15 addition here. The judicial conference and the State
16 Bar Association Committee that reviewed this expressed
17 some concern that the power given to Commissioners in
18 connection with arrest warrants and bail might be
19 read to encroach upon the power of the Superior Court
20 judges.
21 It is my understanding that it is the intention

1 of the Committee that there is to be no such encroach-
2 ment, and I would like it recorded that the Commission
3 concurs in that. There is no limitation whatever
4 intended in that paragraph.
5 THE CHAIRMAN: I think this is clear from
6 the earlier debate, and I would anticipate the
7 report would make it abundantly clear that the
8 Commissioners are merely additional officers to perform
9 this function. Next section.
10 MR. MARTINEAU: Page 10 and Page 11, we have
11 revised substantially Section 12 and, therefore, we
12 have deleted completely the old Section 12 and have
13 inserted --
14 THE CHAIRMAN: May I back up again. In
15 Section 11, this may be purely a stylistic change, but do
16 you mean to authorize retired judges to perform temporary
17 judicial duties or do you mean to aurhorize retired
18 judges temporarily to perform judicial duties? I take it
19 it is the latter.
20 MR. MARTINEAU: You are correct. This is
21 why we have the Committee on Style.

1 THE CHAIRMAN: No, that could be more than
2 style.
3 MR. MARTINEAU: We at least didn't split
4 the infinitive.
5 THE CHAIRMAN: Section 12.
6 MR. MARTINEAU: As I said, Section 12 is
7 rewritten in an attempt to meet the votes taken at the
8 last meeting of the Commission. The first sentence,
9 I believe, is exactly the same and also the second
10 sentence is the same. Third sentence was changed from
11 requiring that a pension be provided to merely
12 providing that a pension, once it is granted, may not be
13 reduced. So the language we are proposing says: Any
14 provision for the payment of a pension to a retired judge
15 or his surviving spouse, in effect during his continuance
16 in office, shall not be reduced. This would mean that
17 whatever the pension, the highest the pension would be
18 while he was in office, that would be the pension to
19 which he was entitled during the rest of his life and his
20 widow for the rest of her life. It does not require that
21 a pension be granted, which was the vote of the Commission

1 at the last meeting.

2 THE CHAIRMAN: Go ahead.

3 MR. MARTINEAU: The next sentence, I believe,

4 is exactly the same as in our previous report. The

5 only other change is in the beginning of the next

6 paragraph in which we attempted to include what the

7 Commission voted last time, that is, no judge during

8 his continuance in office -- no judge while receiving

9 any pension probablyshould be hereunder, Mr. Chairman --

10 shall engage in the practice of law, et cetera.

11 In other words, the prohibition contained

12 in that second paragraph would apply to a judge receiv-

13 ing a jurisdictional pension as well as a judge actively

14 on the Bench.

15 MRS. BOTHE: Mr. Chairman, is it the

16 present law that a retired judge receiving a pension

17 can't make contributions to political parties?

18 MR. MARTINEAU: I don't believe it is.

19 MRS. BOTHE: This is putting an added

20 restriction on retired judges,and I think they are

21 restricted enough as it is.

1 MR. MARTINEAU: Frankly, in drafting this
2 I must say this is my thought: That a retired judge
3 should be put under the same prohibitions as the judge
4 in office. He is still occupying, he has the status of
5 a retired judge, being paid by the state for his
6 service as a judge, and while he is doing that, it seems
7 to me that he should not be able to engage in any of
8 the partisan political activities and carry with him
9 the status of being a retired judge and being paid by
10 the state for his services as such.
11 Of course, you may disagree with this and
12 only want to put in some of those prohibitions against
13 the retired judge.
14 MR. HAILE: A judge who is running for
15 the office he holds, may he take part in a partisan
16 political campaign? I see an ambiguity there. I should
17 think if he is running for the judicial office he holds,
18 he must necessarily take part in a partisan political
19 campaign.
20 THE CHAIRMAN: Not under this.
21 MR. MARTINEAU: This is a noncompetitive

1 election.

2 THE CHAIRMAN: He is not running against

3 anybody under this Constitution.

4 MR. HAILE: And make no contributions or

5 anything?

6 MR. MILLER: I would like to raise a

7 voice. It would seem to me under the wording here,

8 a retired judge, drawing his pension, would be prohibited

9 from contributing to a policital party. The word here

10 would not, and I don't think he should be deprived of

11 the privilege of giving money to a friend who might be

12 a candidate in any party. Would this prevent him from

13 doing that?

14 MR. MARTINEAU: He is taking part in a

15 partisan political campaign, I would think.

16 MRS. BOTHE: Mr. Chairman, if I recall the

17 debate on this area in the last meeting, I don't believe

18 that the Commission voted to tie the hands of the judges

19 receiving pensions to the extent that the Committee has

20 done. I can see why the Committee did it this way,

21 because it is much simpler to combine the retired with

1 the active judges, but remember they are only receiving
2 a pension, and they are not subject to political
3 influence in their decisions because they are no longer
4 on the Bench.
5 MR. MARTINEAU: They may be because they
6 can be recalled.
7 THE CHAIRMAN: Let her finish.
8 MRS. BOTHE: We have a provision in the
9 Constitution which makes them potentially recallable
10 only in the discretion of the Chief Judge of the
11 Court of Appeals, who might refrain from recalling a judge
12 who is actively engaged in political activity and I,
13 without wanting to make a very extensive provision in
14 the Constitution for pensioned judges, because I don't
15 think really it is worthy of this, I am aware that the
16 Commission voted at the last meeting to continue pro-
17 hibitions on the judges receiving pensions, I would still
18 feel that the Committee should curtail these restrictions.
19 I certainly don't think they are of constitutional
20 significance when a man is receiving a pension who is
21 no longer occupying judicial office and what he does with

1 his time and his restricted pension income --

2 THE CHAIRMAN: Do you want to make that

3 motion?

4 MRS. BOTHE: I move that the language be

5 reworded so that the only restriction on a retired

6 judge receiving a pension is that he may not practice

7 law.

8 THE CHAIRMAN: May I suggest to you another

9 question that perhaps could be raised in the same motion.

10 I am bothered by the fact this is stated in terms of

11 prohibiting the doing of certain things while receiving

12 a pension rather than of saying that you shall not

13 receive a pension while you do certain things. I am

14 wondering whether the idea here was that if a judge did

15 any of these things, he forfeited his pension, or only

16 during the time he did them.

17 MR. MARTINEAU: Just during the time he did

18 them.

19 THE CHAIRMAN: It would be clear if you

20 phrased it in terms of saying that no judge, while he

21 does these things, should have a pension.

1 Mrs. Bothe, could you combine that thought
2 in your motion?
3 MRS. BOTHE: Yes, I think inherent in
4 that is the necessity to separate judges in office from
5 retired judges receiving pensions; otherwise, it is not
6 going to be possible. I would propose that the language
7 be that no retired judge shall receive a pension while
8 engaging in the practice of law.
9 THE CHAIRMAN: Is there any second?
10 MR. GENTRY: I'll second that.
11 THE CHAIRMAN: Is there any discussion?
12 Comment, Mr. Martineau?
13 MR. MARTINEAU: No, I believe I stated the
14 reason for it. I think it is proper to apply the same
15 prohibitions to a judge receiving a pension.
16 THE CHAIRMAN: Mr. Clagett.
17 MR. CLAGETT: I only want to point out that
18 no contribution or to hold any office in a political
19 organization or take any part in any partisan political
20 campaign is also a protection to the judge as well as
21 a restriction on him.

1 MR. SYKES: I want to point out that judges,
2 like Eva Peron, always retain their titles from their
3 former positions, and the allowance of active politicking
4 by somebody who is called Judge in the course of
5 the political campaign is inconsistent with the kind of
6 picture of the judiciary that we are trying to create
7 and the kind of status we are trying to create here.
8 I think we are making some kinds of glorified
9 monks out of the judges which is as it should do. They
10 have a noble and sacred calling, and I don't think
11 their image should be soiled. I think the provision
12 as the Committee has it, with the possible exception of
13 tidying up the language that the Chairman suggested,
14 is what should stay as a matter of policy.
15 THE CHAIRMAN: Any further discussion?
16 MRS. BOTHE: I would like to point out that
17 this is an additional limitation that has not so far
18 existed in the Constitution or the laws. That is the
19 first thing.
20 The second thing is that the protections
21 were intended not to protect the image of the judge

1 so much as the influence of the judge while engaging
2 in legal matters.
3 Thirdly, the pension is nowhere near the
4 salary of the judge and the judge is not otherwise
5 occupied after his retirement, so that a prohibition on
6 his becoming engaged in political activities or even
7 contributing to the campaign of his political friend
8 is in my mind an unreasonable one.
9 Fourthly, the objection that is raised
10 because this man is susceptible to recall I don't
11 believe a very rational one because he is saying that
12 the Chief Judge of the Court of Appeals would tarnish
13 the image of the judiciary by recalling the man who had
14 engaged in these activities. I am sure we have ample
15 protection against that.
16 MR. HARGROVE: The only thing that bothers
17 me is that there are so many situations you can have
18 where you don't have a judge in office or a retired
19 judge, instances where judges decline to run, for
20 example, and go back into law practice. It says shall
21 engage, it lumps both the judge in office and the

1 retired judge. I think they almost have to be separated
2 because they are two different animals.
3 For example, a defeated judge, it is possible
4 under this for a defeated judge to receive a pension
5 if he has once been elected. If he stays any length
6 of time after the first election, he receives his pension.
7 Therefore, I would suggest perhaps that maybe we should
8 separate these in the interest of dealing with them
9 as separate things.
10 THE CHAIRMAN: This raises an interesting
11 question, and I will ask Mr. Martineau. Is a judge
12 who has been rejected by the voters a retired judge?
13 MR. HARGROVE: It is more realistic than
14 one who declines to run after being elected to one term.
15 I think that is a real possibility.
16 MR. MARTINEAU: The question isn't whether
17 he is a retired judge. The question is whether he is
18 a retired judge receiving a pension and whether
19 the Legislature is going to give that man a pension I
20 don't know. If he is receiving a pension, this applies,
21 I would say.

1 DR. BARD: Mr. Chairman, does the
2 pension vary in terms of the number of years?
3 THE CHAIRMAN: Yes, it does.
4 DR. BARD: Would it be possible for him to
5 receive an extremely small pension under the circumstances
6 which were just stated because he had been in for such
7 a short time and certainly it wouldn't be worthwhile for
8 him to take the pension and thus give up all of the
9 possibilities in practicing law, et cetera.
10 MR. MARTINEAU: He only gives up the pension
11 during the time he is doing these things.
12 MRS. BOTHE: I propose a substitute in my
13 motion, which might answer Mr. Hargrove's suggestion.
14 That is, to substitute for the word retire the words
15 former judge or some word which would take in anybody
16 as receiving a judgeship, pensioned by virtue of
17 judicial service.
18 THE CHAIRMAN: Are you ready for the
19 question? The question would arise on the motion to
20 amend this section so as to provide that no judge during
21 his continuance in office shall engage in the practice

1 of law, run for elective office other than the judicial
2 office he may then hold, et cetera, or take part in any
3 partisan political campaign or receive, except as herein
4 provided, any remuneration for his judicial service,
5 and to provide that no retired or former judge shall
6 receive a pension while engaging in the practice of
7 law.
8 MR. SYKES: Pension for judicial service.
9 THE CHAIRMAN: Pension for his judicial
10 service while engaging in the practice of law. Are you
11 ready for the question? All those in favor signify by
12 a show of hands.
13 MR. HARGROVE: Would you state that again?
14 THE CHAIRMAN: What we are saying is that
15 the only limitation on the retired or former judge is
16 that he shall not receive a pension while he engages in the
17 practice of law. A vote in favor of this motion would
18 permit the former judge to engage in all these other
19 activities and receive his pension also.
20 DR. BARD: I am against it.
21 THE CHAIRMAN: A vote aye is a vote in favor

1 of the requirement that as to a former judge, a retired
2 judge, he shall have no limitation except that he does
3 not receive a pension while he is engaged in the practice
4 of law. He could engage in political activities with-
5 out affecting his pension.
6 MR. MITCHELL: Mr. Chairman, I happen to
7 believe that if a judge earns a retirement and retires,
8 he can do anything he wants and still collect his
9 pension. Which way would I vote on this?
10 MRS. BOTHE: Yes.
11 MR. MITCHELL: This is my belief.
12 THE CHAIRMAN: You would vote no and make
13 a motion afterwards to change the section.
14 MRS. BOTHE: That is why my motion does not
15 go to that point. It does not touch the area I am
16 referring to, and we cannot reverse the past action.
17 THE CHAIRMAN: A vote aye is a vote in
18 favor of having only one limitation on the retired or
19 former judge, and that is he should not receive a pension
20 while he practices law. All those in favor, please signify
21 by a show of hands. Contrary. The motion is lost six

1 to eight.

2 MRS. BOTHE: Mr. Mitchell's vote was cast

3 under a misapprehension from the Chair.

4 THE CHAIRMAN: Why the misapprehension?

5 MRS. BOTHE: Because he was instructed a vote

6 no would enable him to propose a motion allowing any

7 retired judge to engage in all activities, whereas,

8 the fact is that no such motion would be entertainable.

9 THE CHAIRMAN: I guess that would be true

10 except as the motion to reconsider. Mr. Mitchell, under

11 the circumstances, do you want to change your vote?

12 MR.MITCHELL: No, Mr. Chairman, I understood

13 this question of whether or not a retired judge can accept

14 a pension and still practice law has been thoroughly

15 debated, and I believe that I recall that and I believe

16 that I will not open it up.

17 THE CHAIRMAN: Any further discussion as

18 to this section? Now, Mr. Martineau, is there any more?

19 MR. MARTINEAU: No, that is all.

20 THE CHAIRMAN: In the second paragraph of

21 Section 14, since we have eliminated divisions in the

1 next to the last line, strike the words for each division
2 and after district court say in each district.
3 MRS. FREEDLANDER: Strike and also, Mr.
4 Chairman.
5 MR. MARTINEAU: I agree with that.
6 THE CHAIRMAN: No, the and stays, there shall
7 be a chief deputy clerk of the Superior Court in each
8 county and of the Superior Court in each district.
9 That concludes consideration of this report. Your
10 Committee still has to report on the troublesome ques-
11 tion of the continuance of judge's salaries and pensions.
12 I would like to take up now the question
13 of impeachment. You have two memoranda, two research
14 memoranda dealing with the question of impeachment.
15 I have a commentary that discusses the
16 debates in the Constitutional Convention of 1787 and
17 that this is very interesting because it indicates
18 quite clearly, as is stated in the memoranda, that the
19 whole question of impeachment and whether it could be
20 exercised by the Legislature at all under the doctrine
21 of separation of powers was seriously questioned, that

1 could not be exercised by the Legislature.

2 In any event, there was apparent unanimity

3 of opinion that in order to give the legislative branch

4 impeachment power, it had to be put in the Constitution.

5 Most of the debate centered about the question of who

6 should impeach and who should try the impeachment.

7 It is pointed out in the memoranda there

8 were a number of different alternatives suggested such

9 as trial by the Supreme Court and other devices. It

10 seems to me that we cannot do this, on the basis of

11 this research, rely on any inherent power of

12 impeachment. Therefore, we must provide for impeachment.

13 Now, Dr. Bard, your Committee hasn't had

14 too much opportunity to go over this.

15 DR. BARD: Yes, we did. We went over this

16 last night. This Section 16 of our report represents the

17 only item, Mr. Chairman, concerning which we were asked

18 to give further deliberation and rewrite. That is Page

19 5, the Seventh Report of the Committee on the Legislative

20 Department. I shall read it as we did it last night.

21 The House of Delegates shall have in the cases

1 of high crimes and malfeasance in office the sole power
2 of impeachment, but a majority of the members must
3 concur. The impeachment powers shall extend to all
4 elected officials, judges, and other civil officers of
5 the state. All impeachments shall be tried by special
6 tribunal of 12 judges appointed by the Senate from among
7 the judges of the various state courts. Any person
8 impeached shall be convicted only upon the concurrence
9 of three-fifths of the special tribunal. Judgment shall
10 be removal from office and may include disqualification
11 from holding any office of public trust.
12 THE CHAIRMAN: What is three-fifths of twelve?
13 DR.BARD: The only reason I included the
14 three-fifths -- last night we said two-thirds, and we
15 were very careful.
16 MR. MILLER: Let's make it 15 judges.
17 DR. BARD: Since Congressman Miller put
18 that proviso in, would that meet with your pleasure?
19 THE CHAIRMAN: I have no feeling about it.
20 DR. BARD: That is the same as the United
21 Nations Court.

1 MRS. BOTHE: Could you read that again?

2 MR. GENTRY: We don't have it before us, but

3 I heard words like high crimes and convicted of.

4 THE CHAIRMAN: Let's do this. Let's read it

5 again and, if you would, please, at each sentence let's

6 discuss it as though it were a section.

7 DR. BARD: And let me add we had a good deal

8 of debate last night in regard to such terms as high

9 crimes, and once you fool with that, you've got --

10 MR. GENTRY: What do you mean by it?

11 DR. BARD: You have misdemeanors and you

12 have all sorts of legal terms. We decided this was

13 the only phrase that would cover it. This is a word of

14 art, abstract art. The House of Delegates shall have,

15 in cases of high crimes and malfeasance in office, the

16 sole power of impeachment. I will stop there. That is

17 not the complete sentence.

18 MR. MITCHELL: I would like to have a defini-

19 tion of a high crime in this context.

20 MR. MILLER: I can only say the Federal

21 Constitution says high crimes and misdemeanors and we did

1 away with misdemeanors because of its unfortunate
2 connotation in Maryland where some misdemeanors are --
3 and we meant high crimes and we thought that was enough
4 to say.
5 MR. MITCHELL: Would this include larceny?
6 MR. HOFF: Petty larceny.
7 MR. GENTRY: Does nonfeasance mean malfeasance
8 or all feasance?
9 DR. WINSLOW: I think we said that misfeasance
10 and malfeasance are included under high crimes because
11 they are illegal acts. Nonfeasance is an unwillingness
12 or may be the result of an unwillingness to do something
13 which ought to be done.
14 For instance, if a comptroller, an appointed
15 comptroller is a rascal but the Governor refuses to
16 dismiss him. In this case we would say the Governor is
17 guilty of nonfeasance and therefore the impeachment could
18 apply to the Governor for this unwillingness to act.
19 THE CHAIRMAN: That concept is worrying me.
20 MR. HOFF: Me to.
21 THE CHAIRMAN: Do you mean that the Constitution

1 vests in the Governor a discretion to remove or retain
2 an executive officer, and if the Legislature thought
3 that he should exercise the discretion by removing the
4 officer, it would be an impeachable offense not to do
5 so?
6 MR. MILLER: That was our thought.
7 MR. HOFF: That would open up unlimited
8 doors.
9 THE CHAIRMAN: That would take away from
10 the Governor the discretion that is vested in him.
11 MR. MILLER: We fully agreed, but suppose
12 this man is a complete rascal?
13 THE CHAIRMAN: Why not impeach him?
14 MR. MILLER: He is not an elected officer.
15 THE CHAIRMAN: It seems to me that is a
16 back hand way to get at the problem. Why do you limit
17 yourself to executive officer then if you feel he should
18 be subject to removal other than by the Governor?
19 MR. WINSLOW: I had suggested that impeachment
20 ought to go to chief appointed officers of the government.
21 It was felt by the Committee, as I remembered, it should

1 be limited to elected officers.

2 MR. MILLER: They didn't know where to put

3 the period on appointed officers because you impeach a

4 notary public.

5 THE CHAIRMAN: But it seems to me that you

6 could provide, as I think some constitutions do,

7 that the impeachment power should extend to department

8 heads who would be appointed, assuming that the merit

9 system would provide the necessary machinery for hearing

10 and whatnot for the removal of anybody below a department

11 head.

12 DR. BARD: We actually do, Mr. Chairman.

13 The next sentence would make it clear, for example,

14 impeachment powers shall extend to all elected

15 officials, judges, and other civil officers of the

16 state, which means we do have the privilege the way we

17 have worded it to carry out the impeachment.

18 MR. SYKES: Mr. Chairman, a review of Mrs.

19 Freedlander's memorandum indicates that the Committee

20 came out with a provision that is like none of the models.

21 The models which are summarized at Page 7 and 8 of her

1 draft give two basic types of choices. One type is
2 a very generalized word such as misconduct and mal-
3 administration and that obviously lends to the impeaching
4 authority and the impeaching tribunal a broad power of
5 construction. The other type tries to define the
6 grounds of impeachment more clearly. They do not adopt
7 the formula adopted by the Committee, but some
8 representative samples are corrupt conduct in office
9 or for crimes. Some include habitual drunkenness, wilful
10 neglect of duty, and treason and bribery.
11 I think that what we have to do is resolve
12 whether or not we want a very broad definition such as
13 misconduct or a broad categorization and, if not, what
14 ought to be the specific grounds. I suggest that what-
15 ever we decide, the vagueness of high crimes and non-
16 administration, especially as interpreted by the Committee,
17 is not a separable solution.
18 THE CHAIRMAN: Dr. Bard.
19 DR. BARD: We spent a good deal of time
20 talking about elaborating the specifics such as habitual
21 drunkenness. We felt that it was not well to set forth

1 possibilities within this frame of reference, on miscon-
2 duct, for example, or corruption in office. These are
3 rather difficult to get hold of without putting them
4 within the context of the situation. We did seek, Mr.
5 Sykes, a more generalized category. Perhaps we didn't
6 hit upon a good one in connection with nonfeasance, but
7 it is very difficult to get a generalized category other
8 than high crimes. Would you have one?
9 MR. SYKES: I don't know what a high crime
10 means unless it means a crime involving some element
11 of moral terpitude,which I could understand.
12 MR. GENTRY: In the election article for
13 disenfranchisement we said serious crime as provided
14 by law. I offer that.
15 THE CHAIRMAN: May I make a suggestion or
16 an observation. It seems to me that what we have done,
17 thinking broadly of the Constitution, is to confer on
18 the Governor full power to remove at his pleasure people
19 above the merit system in rank. We conferred on the
20 judiciary full power to remove judges for misconduct or
21 nonperformance of judicial duties.

1 So that as to those two branches of the
2 government, we are concerned with impeachment only in
3 an extraordinary case, only in a case where the Governor
4 has not acted to remove a man for whose conduct he is
5 going to be held responsible or where the judiciary has
6 not acted to remove a judge whose conduct is such that
7 he ought to be removed.
8 I suggest, number one, that that is going
9 to be a most unusual and a very rare case. In the
10 judiciary I call call your attention to the fact that
11 the last impeachment of a judge in Maryland was just
12 before 1867, 1864 or something. In the Legislative
13 Department, therefore, is the only area where you do not
14 have a provision already for the removal of persons in
15 office except for the provision for expulsion of a
16 member from the Legislature.
17 MR.SYKES: The Governor himself.
18 THE CHAIRMAN: Or the Governor himself.
19 This being the case, it seems to me what you are con-
20 cerned with in impeachment is not an added punishment for
21 one who is convicted of some other crime. What you are

1 concerned with here is only removing from office a person
2 who has demonstrated that he is misusing the office or
3 not performing the duties of the office. If these
4 principles are correct, would it not be proper to limit
5 impeachment to cases of misconduct in office? This
6 would mean that you would not remove a governor who was
7 guilty of some other offense, petty larceny or even
8 larceny if it didn't involve the state funds, but his
9 punishment for that offense would be left to the law
10 just as that of any other citizens and his removal by
11 impeachment would be limited to misconduct in office.
12 This suggestion has its limitations because
13 you could then continue in office a Governor who was a
14 convicted thief. But I suggest to you that if so, and
15 he was sentenced to imprisonment, he could probably be
16 impeached for failing to perform the duties of
17 his office.
18 MR. MITCHELL: I believe you said misconduct.
19 I am also concerned in this process of no conduct. It
20 is not doing the job.
21 THE CHAIRMAN: I think misconduct in office

1 is broad enough to encompass not only the affirmative
2 act but the failure to act. But I would have no objection
3 at all to using some term.
4 MR.SYKES: Wilful neglect of duty.
5 MR. HARGROVE: Mr. Chairman, I would have
6 some serious concern about the nonconduct in
7 office, because as long as we have a two-party system
8 and it is conceivable you can have a governor of a
9 different party. This can become a rather serious
10 political question there. I would think that the
11 failing to perform the office is something which the
12 voters ought to be concerned with. I think the General
13 Assembly can very well move under our Constitution even
14 if the Governor does not perform his job. So I think
15 there is very little danger that this is going to be
16 a real serious problem except if we include it.
17 MR. MILLER: Didn't we have a case rather
18 recently in Baltimore County where a judge justwouldn't
19 do any work? That wasn't easy to handle.
20 THE CHAIRMAN: No, but you have a provision
21 in which it can be handled.

1 MR. MILLER: In the judicial proceeding,
2 if we had an officer that wasn't a judge that did the
3 same thing.
4 MR. HOFF: He resigned by reason of threat
5 of impeachment.
6 THE CHAIRMAN: He retired.
7 MR. HARGROVE: You can operate without one
8 official perhaps. The General Assembly can operate by
9 passing laws without the Governor acting really if he
10 doesn't act within a certain time. They can act for him.
11 MR. MILLER: I don't think we thought of
12 that particular measure as applying necessarily to a
13 governor. It could apply, but we felt there ought to
14 be some provision for taking care of a person that
15 just went off on a drunk and didn't attend to his job.
16 That is not a high crime or necessarily even a misdemeanor.
17 THE CHAIRMAN: Mrs. Bothe.
18 MRS. BOTHE: I suggest where the failure to
19 act is of such serious dimension as that, it would be
20 misconduct, where if it were merely a failure to act
21 in a comparatively mild or unimportant situation, it

1 wouldn't be impeachment, that we ought to leave it to
2 an affirmative definition rather than a negative one.
3 THE CHAIRMAN: Mr. Mitchell.
4 MR. MITCHELL: I am going to move that
5 impeachment under this section now under discussion
6 embrace the officers mentioned in the Committee's
7 report but be limited to cases of misconduct in
8 office and wilful neglect of duty.
9 THE CHAIRMAN: Dr. Bard.
10 DR. BARD: I want to call your attention --
11 THE CHAIRMAN: Just a second. Is there a
12 second to the motion?
13 MR. SYKES: I will second that.
14 MR. MILLER: Speaking as one of the rather
15 reluctant draftees, I have no objection to the words
16 as used here, but I don't think they go far enough.
17 I think we ought to have high crime or some word of
18 art in there.
19 MR. MITCHELL: I will add the word treason.
20 DR. BARD: May I read, Mr. Chairman, from
21 the Constitution of the United States, Article 2, Section 4.

1 The President and Vice President and also officers of
2 the United States shall be removed from office on
3 impeachment for and conviction of treason, bribery, or
4 other high crimes.
5 DR. BARD: Yes, we didn't want to include
6 misdemeanors because we thought that would get us into
7 difficulty. But the point is that the President, too,
8 Mr. Chairman, under the illustrations you have indicated
9 could be tried by law apart from Congress. We had the
10 same feeling about the Governor,that there needs to be
11 some possibility for taking care of a situation when you
12 have an absolute scoundrel. It may not occur but
13 once in 200 years.
14 MR. HARGROVE: That was tried once and
15 failed, I believe, didn't it?
16 THE CHAIRMAN: Is there a second to Mr.
17 Mitchell's motion?
18 MR. SYKES: I will second it and offer an
19 amendment.
20 THE CHAIRMAN: All right.
21 MR. SYKES: I would like to amend it to read

1 serious crimes or serious misconduct in office. I think
2 that this would include all of the things that we have
3 been talking about. I think the Federal provision
4 on misdemeanors really didn't mean misdemeanors as
5 opposed to felonies. In the 18th Century it meant
6 misconduct, and now it means something else.
7 THE CHAIRMAN: Mr. Mitchell, would you
8 accept the amendment?
9 MR. MITCHELL: Yes, Mr. Chairman.
10 THE CHAIRMAN: Is there any further
11 discussion?
12 MR. MILLER: Question.
13 THE CHAIRMAN: The motion is that the section
14 be amended so as to authorize impeachment for serious
15 misconduct. You didn't say in office.
16 MR. SYKES: Yes, I did.
17 THE CHAIRMAN: Serious misconduct in office
18 and serious crimes.
19 MR. SYKES: The other way around, serious
20 crimes or serious misconduct in office.
21 MR. MITCHELL: And wilful neglect of duty I

1 believe is also in there.

2 MR. SYKES: If it was serious and if it

3 was wilful neglect, this would be encompassed by

4 misconduct.

5 MR. HOFF: It doesn't hurt to put it in

6 there.

7 THE CHAIRMAN: I would think so, Mr. Mitchell.

8 The question arises on the motion to provide that the

9 impeachment shall be limited to conviction for serious

10 crimes or I should say serious misconduct in office.

11 Are you ready for the question?

12 DR. BARD: Question.

13 THE CHAIRMAN: All those in favor, please

14 signify by a show of hands. Contrary. The motion is

15 carried, twelve to nothing. Any further discussion?

16 MRS. BOTHE: I don't think there is a quorum

17 here.

18 THE CHAIRMAN: There are fourteen here.

19 MR. CLAGETT: I will vote for it, so that

20 makes it thirteen.

21 THE CHAIRMAN: The quorum is here.

1 DR. BARD: But a majority of the members.

2 MR. HOFF: In the second sentence did you

3 start that by saying the impeachment power shall extend

4 to --

5 DR. BARD: I haven't finished the first.

6 MR. HOFF: I know, but you don't extend the

7 power to these.

8 DR. BARD: Shall embrace.

9 MR. SYKES: No, they are subject to impeachment.

10 THE CHAIRMAN: I think you have to turn the

11 sentence around.

12 DR. BARD: Subject to the impeachment power.

13 Good point. Shall I finish the second part?

14 THE CHAIRMAN: Yes.

15 DR. BARD: When a majority --

16 THE CHAIRMAN: Who is subject to impeachment?

17 DR. BARD: That is in the second sentence.

18 But a majority of the members must concur. I must say

19 here that there was some difference among our Committee

20 members so that I wish you would pause just a moment to

21 consider it.

1 THE CHAIRMAN: You mean difference as
2 to more than a majority? This is just the indictment
3 so to speak.Does anyone want more than a simple majority?
4 Mr. Hoff.
5 MR. HOFF: I would move that three-fifths
6 vote be required.
7 MR. MITCHELL: Second.
8 THE CHAIRMAN: The motion is that the provi-
9 sion be amended so as to provide that impeachment be
10 by a vote of three-fifths of the elected members. Is
11 there any discussion? Those in favor signify by saying
12 aye. Contrary, no. The ayes have it and it is so
13 ordered.
14 DR. BARD: Now the second sentence.
15 MR. SYKES: Can I make one more suggestion
16 on the drafting. I think rather than say the consent
17 of three-fifths of the members should be required, it
18 ought to just say upon concurrence.
19 THE CHAIRMAN: The whole sentence should be
20 redrafted and the second sentence. We are not passing
21 on the phraseology.

1 DR. BARD: Subject to the impeachment power
2 for elected officials, judges, and other civil officers
3 of the state, and this comes almost verbatim from the
4 recommendations of the two memoranda.
5 THE CHAIRMAN: I am troubled about other
6 civil officers of the state because it is not definitive
7 enough for me. Couldn't limit it to head of departments.
8 MR. MARTINEAU: Gubernatorial appointees.
9 MR. MILLER: How about a member of the
10 State Roads Commission or the Police Commissioner? They
11 ought to be subject to it.
12 DR. BARD: We were troubled but couldn't
13 hit upon anything else. What is there besides adminis-
14 trative boards and heads of departments as defined in
15 the executive officer?
16 THE CHAIRMAN: I suppose it is one of the
17 things where it is the best you can do, and you will have
18 to leave it to further definition. Are there any further
19 suggestions for change?
20 MR. SYKES: The word public officer is a well
21 understood and much construed term. Maybe the thing to

1 do is to incorporate all the learning associated with
2 those words.
3 MR. HARGROVE: Your real problem here in
4 leaving it undefined is that there are so many built-in
5 dangers, there are certainly for any serious problem in
6 office such as bribery, accepting of funds, and things
7 of that sort. I think the criminal statute certainly
8 takes care of them. On the other hand, a person who is
9 incompetent to come under this definition -- and
10 yet that is really the responsibility of the appointing
11 party. He has to accept that responsibility and accept
12 the detriment attached to it.
13 That is one of the problems I would find
14 with the language of public officers. When you get way
15 down, I know of situations recently where you had a
16 notary public who might have accepted a seal without
17 the person being present. These are the things that
18 require thought, and it seems to me we are putting in
19 some built-in political problems.
20 THE CHAIRMAN: What could you suggest other
21 than civil officer?

1 MR. HARGROVE: I don't know. I don't
2 think it should be in there at all. These are the
3 things that are built into any type of government,
4 incompetency is built in. You have to rely on the
5 Governor to appoint good people. Any crime committed
6 there, the laws take care of it.
7 MRS. BOTHE: Could I suggest that we ask
8 the Committee that question? It seemed to me when we
9 reviewed that report we had a clear picture of who
10 the people would be besides the heads of departments,
11 and if we should limit in some way, we should. We are
12 not talking about an officer that comes under the executive.
13 MR. MARTINEAU: How about local officers?
14 MRS. BOTHE: They are not included.
15 MR. BROOKS: The Executive Committee didn't
16 have a view on that.
17 MRS. BOTHE: No, they didn't, but in the
18 course of preparing their report on their streamlined
19 proposals, they would probably come up with one or two
20 categories of people that ought to be in here and would
21 take care of it there. If I had my report with me today,

1 I might be able to show you.

2 MR. BROOKS: If you want it to parallel

3 those people who are subject to appointment by the

4 governor --

5 MR. MILLER: We thought, Mr. Chairman, that

6 this oughtn't to be narrowed down by trying to spell out

7 too much. Now as a practical matter, no legislature is

8 going to start out to impeach some small-time

9 employee of the state who has committed some petty crime.

10 They will wind up in the criminal courts just as sure

11 as fate but we ought not to have an argument based on a

12 constitutional provision that isn't flexible enough

13 so when it is something where the Legislature warrants it --

14 THE CHAIRMAN: Let me interrupt you.

15 Could we solve the problem by saying instead of other

16 civil officer, say such other civil officers or such other

17 public officers as may be designated by law, leaving

18 to the Legislature the designation of the extra classes?

19 MR. MILLER: Yes. They could pass a law and

20 bring somebody in.

21 MRS. FREEDLANDER: I have one or two things.

1 To repeat what I mentioned in the memorandum, we have
2 eliminated almost all the constitutional officers,
3 which means they are appointed by the Governor, so
4 many of the others, and he is the final one and the
5 final arbiter and is responsible, and pressures
6 could be put on him rather than thinking in terms of
7 impeachment.
8 THE CHAIRMAN: Would you accept the change?
9 DR. BARD: I would.
10 THE CHAIRMAN: Is there any objection?
11 DR. BARD: Would you state that again?
12 THE CHAIRMAN: And such other civil officers
13 or public officers -- I don't care which you use --
14 as may be provided by law, designated by law.
15 MR. SYKES: I don't think you want to
16 exempt the adjutant general.
17 MR. MILLER: The adjutant general of Maryland
18 would be subject to it.
19 THE CHAIRMAN: I am not so sure he is not
20 a civil officer.
21 MR. MILLER: He can be tried in a military

1 court but a junior officer would be subject to the
2 military, not to impeachment.
3 THE CHAIRMAN: Now the next sentence.
4 DR. BARD: All impeachments shall be tried
5 by special tribunal of 15 judges appointed by the Senate
6 from among the judges of the various state courts. We
7 spent a good deal of time in connection with who should
8 try the actual indictment after the indictment had
9 taken place. For a while we thought about the Senate
10 and thought that wouldn't be good. We hit upon this
11 tribunal. I am going to ask Congressman Miller to tell
12 us why you felt so strongly in connection with this
13 tribunal. We have run it up to 15 now.
14 MR. MILLER: We were embarrassed by the
15 possibility that we might have a general assembly of one
16 body. If that was the case, it would be undesirable
17 to have them initiate an impeachment and then try it.
18 So, starting with that premise -- and some
19 of the states refer to a special court -- suppose the one
20 man you want to impeach is a member of that court. So
21 we thought of a solution. I don't say it is the best

1 solution, but that the Legislature could pick from the
2 panel of judgesX number. We hit on 12 last night when
3 we were talking.
4 DR. BARD: Would ten be all right with you?
5 MR. MILLER: Impeachment is a very unusual
6 thing, and usually it goes before, even in the early
7 day of the republic the Senate had 40 members or so most
8 of the time, that if it was going to be an impeachment,
9 my thought is that it oughtn't to be just a three or
10 five-man court. But I don't care what the number is.
11 THE CHAIRMAN: Mr. Gentry.
12 MR. GENTRY: I really think we are acting
13 very hastily in looking at this and trying to patch
14 together an impeachment section at this late hour with
15 just this few members present. I look at judges and I
16 don't know whether you mean members of the judiciary or
17 you mean members of the Senate who are judges when they
18 are appointed to hear this impeachment case.
19 DR. BARD: We mean members of the judiciary.
20 THE CHAIRMAN: You could read it just as
21 well as members of the Senate. We are not asking you to

1 adopt the phraseology.

2 MR. HOFF: Wouldn't it be better to remove

3 the group of judges to try the impeachment from the

4 Legislature entirely and have them appointed by the

5 Supreme Court?

6 MR. MARTINEAU: Why would you have the Supreme

7 Court do it?

8 THE CHAIRMAN: We are getting to the time

9 when we said we would like to adjourn. Let me put up

10 several questions. It seems to me this last sentence

11 is susceptible to that. The first is whether the trial

12 should be by the legislative arm of the Senate or the

13 House or by the judicial branch. Then we can decide

14 which court.

15 How many under the circumstances proposed

16 would favor trial of an impeachment by the legislative

17 branch.

18 MR. MILLER: With two chambers or one?

19 MR. BROOKS: The trial aspect.

20 THE CHAIRMAN: Put it this way.

21 MR. MILLER: In other words, if you have

1 only one house, I don't think they ought to impeach and
2 then try the case.
3 DR. BARD: They don't in Nebraska, Mr.
4 Chairman.
5 THE CHAIRMAN: Let me get at it this way,
6 because we are going to have alternate provisions.
7 In the event of a bicameral Legislature, how many prefer
8 trial of impeachment by the Legislature?
9 MR. BROOKS: Just one observation. Just
10 speaking about the bicameral Legislature, it would seem
11 that perhaps one of the things that one might consider
12 to make impeachment a practical extraordinary remedy is
13 to overcome what is apparently the most difficulty
14 with impeachment. That is the trial process.
15 It is not the impeachment itself which the
16 lower house votes but rather the awkwardness of the Senate
17 constituted for legislative purposes and being of the
18 number it is, actually conducting a judicial trial. They
19 are really not selected for that purpose, and they them-
20 selves, whenever the occasion has arisen, have discouraged
21 impeachment. That is probably the one reason why

1 impeachment is not used in the few cases where it
2 might otherwise have been desirable to have it used,
3 because they are so apprehensive about trying a case
4 in the Senate chambers when they are so ill-prepared
5 to handle anything of the kind.
6 As a matter of fact, legislative bodies
7 don't really have any full-time court reporter or
8 stenographer present and don't even keep specific records
9 from day to day except on the official record, which is
10 just an account of the record, an official transaction.
11 So I think even in a bicameral system there
12 is a great deal to recommend having a judicial body
13 selected to actually conduct the trial.
14 THE CHAIRMAN: Are you ready for the
15 question? If there is a bicameral Legislature, how
16 many would favor trial of an impeachment by the legisla-
17 tive branch? How many would favor in that situation,
18 with a bicameral legislature trial of impeachment by the
19 judicial branch? I will put the question again.
20 If there is a unicameral legislature, how
21 many would favor trial of impeachment by the legislative

1 branch? With a unicameral Legislature, how many would
2 favor trial in that circumstance by the judicial branch?
3 On the first there were 12 in favor of
4 trial of impeachment with the bicameral legislative
5 system by the judiciary and two in favor of impeachment
6 with the judicial branch.
7 With the unicameral legislature, all 14
8 favor trial by the judiciary branch.
9 The next question would arise as to the size
10 of the court or who would designate the court. Let's
11 take the latter. How many would favor designation of the
12 judges to constitute the court by the legislative branch?
13 MR. GENTRY: What is the alternative?
14 MRS. FREEDLANDER: What if the chief judge
15 is involved?
16 THE CHAIRMAN: I think you would probably
17 say by the Supreme Court.
18 MR. MARTINEAU: I would suggest the Supreme
19 Court as an alternative.
20 THE CHAIRMAN: All right.
21 MR. MITCHELL: By the majority of the Supreme

1 Court or something.

2 MR. HOFF: This is appointment by the

3 Supreme Court.

4 MR. MARTINEAU: No, the Supreme Court as

5 the judicial body to hear the trial.

6 MR. MILLER: In that connection, I would

7 fear it would be a mistake to give original or any

8 particular jurisdiction to the Supreme Court. It is

9 all right for them to select the panel or the judges,

10 but they would be wearing two hats. They are the body

11 of last resort that anybody that committed irregularities

12 would have to go to. If they have initial jurisdiction

13 as the Supreme Court, I think it ought to stay.

14 MR. CLAGETT: That is not what we are

15 talking about.

16 THE CHAIRMAN: That is an alternate Mr.

17 Martineau suggested. I don't know how much effect

18 this observation would have, but if you are going to

19 depart from custom and confer the trial function on

20 the judiciary it might be an adherence in part to custom

21 to let the legislative branch designate the judges to

1 make up the court.

2 MR. MARTINEAU: My suggestion would be to

3 the contrary. I think it would be a dreadful thing to

4 permit a picking and choosing at the time that you

5 have this very hotly debated issue.

6 DR. BARD: We don't mean at the time. The

7 picking would be at the time, but the structure for

8 choosing would be set up in advance.

9 MR. MARTINEAU: That would be dangerous. The

10 best way to have any structure for the trial of such

11 case as this is to have the body already designated so

12 they automatically perform the function and not to have

13 the selection at the time, because you get involved in

14 questions --

15 MR. MILLER: I fully agree, but our thought

16 was that the Legislature could form the body before

17 they had a case. They could by law say we will take

18 all the chief judges or that it would be provided by

19 law, by the Legislature, as to what their panel would

20 consist of.

21 MR. SYKES: It seems to me that this question

1 is so closely tied in with the administration of the
2 courts that it ought to be determined within the court
3 system who can best be spared to sit for however long
4 he may have to sit.
5 You name the Supreme Court as the group to
6 try it. You disrupt their work. You let the Legislature
7 name the judges ad hoc, then you undermine the confidence.
8 If you allow the naming to be done by the Supreme
9 Court, which would rely upon the chief justice and the
10 administrative judge of the Superior Court, it seems to
11 me that you get a judicial type tribunal while at the same
12 time impairing as little as possible the orderly
13 performance of the judicial function in the state.
14 THE CHAIRMAN: Is there any further discussion?
15 MR. MITCHELL: Mr. Chairman, I think that
16 the Supreme Court should not in cases of impeachment,
17 particularly of its own members or any of its own
18 members, be the final tribunal.
19 MR. SYKES: It wouldn't.
20 MR. MITCHELL: It would be if they designate
21 the court to hear it. If it is a ten-judge panel selected

1 from the judiciary, five named by the legislative branch
2 and five named by the Supreme Court, it seems to me
3 that we would eliminate any problem. It is a novel area.
4 If the Governor is being impeached or tried on impeach-
5 ment, it seems to me important enough to establish some
6 semblance of procedure in the Constitution.
7 MRS. BOTHE: There is going to be some
8 difficulty in the case of a possible impeachment of a
9 judge if the courts were to remove under the judiciary
10 article and the other under the impeachment provision.
11 In the former instance it is the Supreme Court that has
12 the power, and you would be walking into a conflict of
13 the Legislature telling the Supreme Court what to do.
14 DR. BARD: What would you have there?
15 MRS. BOTHE: In the cases of judges being
16 impeached, you are going to run into all kinds of
17 difficulty if the Legislature can require the judiciary
18 to sit in judgment with the removal provisions of the
19 judiciary.
20 MR. MILLER: There is another reason we
21 considered of giving the Legislature some pick of who the

1 judges would be. After all, the most important and
2 likely kind of trouble would be if it were an impeachment
3 of the Governor and usually a great many of the members
4 of the court owe their appointment to the Governor.
5 We thought it was better to not have them entirely selected
6 by, to give the Legislature a little chance in selecting
7 the panel.
8 THE CHAIRMAN: Any further discussion?
9 It seems to me the alternates suggested are the designa-
10 tion of the panel of judges by the legislative branch,
11 designation of the panel of judges by the Supreme Court,
12 designation of half by the legislative and half by the
13 Supreme Court, and designation of the Supreme Court
14 itself as a panel. This is going to give us a lot of
15 fractions.
16 MRS. BOTHE: I suggest in any of these
17 instances, particularly the last, there would have to
18 be an exception in the case of a judge who was impeached.
19 MR. MARTINEAU: You say we have that in
20 the judiciary article already.
21 MRS. BOTHE: Thatwould be meaningless as

1 applied to judges.

2 THE CHAIRMAN: All those who would favor

3 designation of the panel by the legislative branch

4 signify by a show of hands.

5 DR. BARD: Can you vote twice?

6 THE CHAIRMAN: No, I think we will have to

7 take it once. The first will be designation entirely

8 by the legislative branch. Second will be designation by

9 the Supreme Court. Third, half by the legislative and

10 half by the Supreme Court. Fourth, the designation of

11 the Supreme Court itself. Maybe instead of doing it

12 the way I suggested, it would be better to do it by an

13 elimination, in that way to get something more than a

14 fractional vote.

15 Now, how to work it to get it by elimination.

16 Let's take up first the question of whether we would

17 have the automatic designation, that is, designation of

18 the Supreme Court. That means no appointment, it is

19 fixed in there. How many would favor that, designation

20 of the Supreme Court as the body.

21 MR. BROOKS: One.

1 THE CHAIRMAN: Then we would eliminate that.
2 Your choice is going to be between designation by the
3 Legislature, designation by the Supreme Court, and half
4 by each. Again moving in the same way, how many would
5 favor half by the Legislature and half by the judiciary.
6 MR. BROOKS: Seven.
7 THE CHAIRMAN: How many would favor designation
8 either by the legislative or by the judicial branch
9 but not half by each, one or the other?
10 MR. HOFF: What?
11 MR. HARGROVE: Let's take one at a time.
12 THE CHAIRMAN: How many would favor
13 designation of the entire panel by the Supreme Court?
14 MR. BROOKS: Six.
15 THE CHAIRMAN: How many would favor designa-
16 tion of the entire panel by the Legislative?
17 MR. BROOKS: One.
18 THE CHAIRMAN: It seems to me what we have
19 come to is that we are almost an equal division on
20 designation either by the Supreme Court or half by each.
21 MRS. BOTHE: I don't know if anybody has

1 commented on the provision of half by each, but it
2 sounds like a meek compromise. Actually it is a piece
3 of chaos, and it will be completely unrealistic as
4 a way to approach it in my opinion.
5 In the first place, the designation of the
6 five or whatever number of judges by the Legislature is
7 going to be a football and, second, it violates a principle
8 in my mind that the Legislature shouldn't be able to
9 yank judges around and tell them where they are going
10 to sit and for what reason. There will be no coordination
11 and cooperation between the Legislature and the Supreme
12 Court in a case of this sort.
13 MR. MARTINEAU: I can't think of anything
14 the Legislature is less equipped to do than to pick
15 people to try a particular case. I think the designation
16 of so many judges by the legislative branch would be,
17 as Mrs. Bothe said, pure chaos.
18 MR. MITCHELL: I think the reason for the
19 compromise is this. The most serious indictment or
20 impeachment which might be tried would be that of the
21 Governor, and the second most serious impeachment I can

1 see would be of one of the judges because we've got a
2 framework here whereby the judiciary is designed to
3 protect us from everybody else, but there is nobody
4 designed to protect us from the judiciary.
5 So the purpose of my suggestion of a compromise
6 was to have some ultimate device so where even though
7 it is to be tried by the judiciary, that suggests that
8 somebody other than just the judiciary has something to
9 do with this important case where one may be removed
10 from an important office.
11 THE CHAIRMAN: Are you ready for the
12 question?
13 DR. BARD: Question.
14 THE CHAIRMAN: The question is now going to
15 arise, the motion lies on whether the Supreme Court
16 should designate judges to try the impeachment or
17 whether half should be designated by the Legislature and
18 half by the Supreme Court.
19 All in favor of the designation entirely by
20 the Supreme Court, signify by a show of hands.
21 MR. BROOKS: Nine.

1 THE CHAIRMAN: All in favor of half by the
2 legislative branch and half by the Supreme Court
3 signify by a show of hands.
4 MR. BROOKS: Five.
5 THE CHAIRMAN: Nine to five in favor of the
6 designation entirely by the Supreme Court.
7 Now we have the question of how many judges.
8 Is there any objection to the last suggestion that the
9 trial be by a panel of ten judges?
10 MR. MARTINEAU: I think that is too many.
11 MR. CLAGETT: I thought Congressman Miller
12 agreed to ten.
13 THE CHAIRMAN: I said the last suggestion was
14 ten.
15 MR. MILLER: I thought it ought to be more
16 than a seven or three-man panel, ten or any multiple
17 of five above that.
18 THE CHAIRMAN: When you get above ten, you
19 get unwieldy, but in impeachment I think you have a
20 situation where you justify a little more than the
21 ordinary.

1 MR. SYKES: It doesn't matter if you have
2 a majority.
3 MR. MILLER: You have to have three-fifths.
4 You have to have six.
5 THE CHAIRMAN: Mr. Sykes.
6 MR. SYKES: This is a specially constituted
7 tribunal with a final jurisdiction.
8 THE CHAIRMAN: That is right.
9 MR. SYKES: There is no appeal.
10 THE CHAIRMAN: Is there any objection to a
11 ten-judge panel?
12 MR. MARTINEAU: As I said, I think that is
13 too many.
14 THE CHAIRMAN: How many favor a ten-judge
15 panel?
16 MR. BROOKS: Twelve.
17 THE CHAIRMAN: How many favor less than a
18 ten-judge panel?
19 MR. BROOKS: One.
20 THE CHAIRMAN: Ten to one in favor of the
21 ten-judge panel. Is there any dissent from the proposition

1 that the conviction on impeachment be by three-fifths
2 of the judges on the panel? Does that cover all the
3 points?
4 DR. BARD: The last sentence, judges shall
5 be removed from office and may include disqualification
6 from holding any office of public trust.
7 THE CHAIRMAN: May I suggest an amendment?
8 Upon conviction, judgment shall be --
9 DR. BARD: Conviction.
10 MRS. BOTHE: I ask the Committee to consider
11 whether there could be some deprivations of office,
12 emoluments and so forth.
13 DR. BARD: Upon conviction, judgment shall
14 be removal from office and my include disqualification
15 from holding any office of public trust.
16 MRS. BOTHE: They are still entitled to more
17 pensions?
18 MR. CLAGETT: As well as deprivation of
19 pension and other emoluments.
20 THE CHAIRMAN: Any objection to adding that
21 phrase?

1 MRS. FREEDLANDER: What would be the other
2 privileges? What would that be?
3 THE CHAIRMAN: I don't know.
4 MR. HOFF: Is it understood there is no
5 appeal, that the judgment is final?
6 THE CHAIRMAN: This is final.
7 (The Commission adjourned at 5:15 p.m.)
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